

1904-006 Chancery Causes A. & M. L. Johnson] vs. L. C. Glass &c
Lee Co.

Folder 1 of 4

Johnson, Douglas, Stewart, Woodward, Davidson, Early,
Offut, Ellison, Dotson, Young, Godsey, Taylor, Chapin,
Million, Whitaker, Hinkle, Fletcher, Asher, Stout, Sage,
Keyp

CA - Contract Dispute
T - Business
(lumber)
Property

To the Honorable H.A.W.Skeen, Judge of the Circuit Court for
Lee County, Virginia:

§§

Humbly complaining your orator and oratrix, A. Johnson and N.L. Johnson, sheweth unto the court, that on the 3rd day of January, 1902, they were engaged in the lumber business at Pennington Gap, buying, selling and manufacturing lumber, and doing business under the style and firm name of A. & N.L. Johnson, and that they have ever since, and are at this time engaged in said business; that on the day and year aforesaid they entered into a contract in writing with one L.G. Glass and one J.P. Glass, by which said contract the said L.G. and J.P. Glass sold unto your orator and oratrix the following described yards and boundaries of lumber, at the prices of \$9.00 per thousand feet for shipping culls, \$16.00, for commons, and \$23.00, for ones and twos, to-wit; about 200,000 feet on C.V. Youngs land on Wallens Creek, Lee county Va., 125,000 on the Stout Land, and about 125,000 on Ozro Youngs land, the last two boundaries or yards on Wallens Creek, Lee county, Va., also about 50,000 feet on James Edwards land in said county, on Powells River, near Tip Top school house; about 50,000 on Dave Lokharts land in said county, about 50,000 on the Wm. Horton Land in said county, and all other poplar lumber which the said L.G. and J.P. Glass might manufacture during the year, 1902; all of which lumber was to be delivered to mill of your orator and oratrix in the town of Pennington Gap, in said county, at the prices aforesaid as will more fully and largely appear from an inspection of the contract, a copy of which is here with filed marked Ex. "A", and which is prayed to be read and treated as part of this bill. That according to the terms of the said contract, your orator and oratrix have advanced large sums of money amounting to some \$2000.00, and probably more, for which, according to the terms of the contract, your orator and oratrix have alien on said lumber.

That your oratrix and orator have faithfully kept each and every stipulation and provision of said contract, so far as the said L.G. and J.P. Glass would permit them, and they have ever been ready, will-

ing, anxious and able to perform their part of the agreement, and are still willing, able and anxious to perform the said agreement, but on the other hand the said L.G. and J.P. Glass have not faithfully kept and performed their part of said agreement, but on the contrary, have failed to keep and perform the said agreement in whole and in every part thereof, and have failed and refused and still do fail and refuse to deliver said lumber or any part thereof, to your orator and oratrix, according to the provisions of said contract and have done every thing in their power to avoid performing the duties incumbent upon them as set out in said agreement. They now absolutely refuse to let your orator and oratrix have said lumber or any part thereof at all, but are now, hauling said lumber or a large part thereof to Duffield in Scott county, Va., and are ^x trying to sell same to other parties, regardless of their contract with your orator and oratrix, and of your orators and oratrices lien thereon. Now your orator and oratrix will show the court that lumber has largely advanced in price in the market since the aforesaid contract was made, and your orator and oratrix believe and so charge that the said L.G. and J.P. Glass are trying to sell said lumber to other parties and hauling the same off to Scott county for the purpose of defrauding your orator and oratrix out of the profits they would receive by reason of said advance.

Now your orator and oratrix will show your honor that the said L.G. and J.P. Glass are practically if not wholly insolvent, so that it would be impossible for your orator and oratrix to recover of them damages commensurate with what they will lose if said L.G. and J.P. Glass are permitted to go on and sell said lumber to other parties; ^{*} therefore, your orator and oratrix are advised that they are entitled to have said contract specifically executed, and to have their lien on said lumber foreclosed, and that they also have the right have the said L.G. and J.P. Glass enjoined and inhibited from selling, removing, or otherwise disposing of said lumber to any person or persons.

Your orator and oratrix, being therefore, remediless save in a court

on grade, as it
will be impossible
by your orator & oratrix
to purchase
said lumber
as it is
being
hailed
to
Duffield
in
Scott
county
Va.
and
are
trying
to
sell
same
to
other
parties
and
hauling
the
same
off
to
Scott
county
for
the
purpose
of
defrauding
your
orator
and
oratrix
out
of
the
profits
they
would
receive
by
reason
of
said
advance.

*

of equity, their prayer therefore is, that the said L.G. Glass and J.P. Glass be made parties defendants to this bill, and that they be required to answer the same, but they need not do so on oath, that being waived, that proper process issue, that the said L.G. Glass and J.P. Glass, and each of them be enjoined and inhibited from removing, selling or disposing of said lumber, or from hauling and delivering any more of the lumber mentioned in said contract and bill, to Scott county, or from selling or disposing of the lumber already hauled to Duffield, Va., until this suit be disposed of, that the contract be specifically executed, that your orators and oratrices lien on said lumber be foreclosed, and that all other further and general relief be granted your orator and oratrix as in the premises are just and right, and they will ever pray, etc.

J. A. Tubbs P.C.

Virginia, Lee County, to-wit:

I, J. A. Tubbs Mayor Lexington Dep Va the county and state do certify that A. Johnson, a member of the firm of A. & N. L. Johnson, personally appeared before me, in my county aforesaid, and made oath that the allegations contained in the foregoing bill, which he makes of his own knowledge are true, and that all other matters therein stated he believes to be true.

Given under my hand this 4th day of Sept., 1903.

J. A. Tubbs, Mayor

The defendants L. G. & J. P. Glass are each hereby enjoined from moving the lumber mentioned in the bill and are also enjoined from selling the same, but this order is not to be effective till the plaintiffs or some one for them execute bonds in the sum of \$1500 before the clerk of the circuit court of Lee County conditioned as required by law.

Dated 5, 1903 H. A. W. Siler
 J. B. Mearns clerk { Judge of Lee County
 circuit court

A and N. L. Johnson
 Bill in Chancery
 L. G. and J. P. Glass

Plf's.
 Costs:
 Mearns C. \$ 2.91
 Embury C. 8.80
 Atty. 15.00
 Shiff. 2.50
 Felt 1.50
 Deposition 45.10
 J. P. C. 75.
 W. C. 2.00
 Com. 60.00
 \$139.36

Def's.
 Costs:
 Clerk 1.60
 Shiff. 1.00
 Felt 2.00
 Dep. 2.75
 W. C. 2.85

To the Hon.H.A.W.Skeen,judge of the Circuit Court for Lee County:

The joint answer of J.P.Glass and L.G.Glass to a bill in chancery filed in the Circuit Court for Lee County by A.Johnson and N.L.Johnson partners in trade under the style and firm name of A.and N.L.Johnson against your respondents.

For answer to the said bill,or so much thereof as your respondents deem that it is necessary that they should answer,not waiving their demurrer to the said bill made,answering they say:

That it is true that on the 3rd day of Jan,1902,the said plaintiffs *as partners in the C.V.Young, Ozro Young, & Stout Lumber* and said defendants entered into a contract in writing whereby the

said defendants agreed to sell to the said plaintiffs certain lumber to be manufactued at certain places at certain prices as specified in said contract,an office copy of which is here filed as part of this answer. By an examination of the said contract it will be seen that there was six lots of the lumber embraced in the said contract,viz.,

- 1-One lot on the lands of C.V.Young,on Waldens Creek, Lee County, Va.,
- 2-One lot on the Stout lands,on Waldens Creek, Lee County, Va.
- 3-One lot on Ozro Youngs land on Waldens Creek,
- 4-One lot on the lands of James Edwards,on Powell's River,
- 5-One lot at the Dave Lokhart yard,
- 6- One lot on the lands of William Horton,near Roller's Chappel.

It will also be seen that the prices to be paid for the said lumber is as follows;viz,

- For Poplar,
- Shipping culls,\$9.00 per m
- Commons,\$16.00
- Ones and twos,\$23.00

- For Oak,
- Shipping Culls,\$7.00
- Commons \$12.00
- Ones and Twos,\$20.00

- For Lynn and Buckeye,
- \$12.00 log run mill culls out.

Now it will be seen from the forgoeing statement of facts founded

34 upon the recitals in said contract that the amount of money which the
 35 said respondents would receive upon said contract on lumber furnished
 36 depended upon two things, first the number of feet furnished under it
 37 and second the grade which said lumber should fall under when the
 38 same was delivered and graded.
 39 *deny that none of said lumber was delivered, to said plaintiff*
 Your respondents aver that under the said contract, striving on
 40 their part to faithfully keep and perform the said contract, they have
 41 gone on and delivered all of the lumber from the Stout land, ~~the James~~
 42 ~~Edwards land,~~ *the C.V. Young land* the Dave Lockart yard and the William Horton land and
 43 about 55,000 feet from the C.V. Young land, amounting altogether to
 44 ~~several~~ *some two fifty* hundred thousand feet, according to the measurement made by
 45 said Johnsons. Under the said contract the said Johnsons ~~were to make~~
 46 certain advancements to your respondents upon the ~~said~~ *C.V. Young & Smith land* lumber which
 47 advancement ~~was to~~ constitute a lien to the extent of such advancement,
 48 and under the said contract the said Johnsons have made several and
 49 ~~considerable~~ *provided for in said contract* advancements, but your respondents deny that the said
 50 advancements exceed the total amount of the lumber received by them
 51 under the said contract; upon the other hand they believe allege and
 52 charge that they have delivered more lumber than the total of the
 53 amount of payments made to them. Your respondents admit that the
 54 account existing between the said plaintiffs and your respondents is
 55 a long and complicated one, and which might deceive your respondents
 56 as to the actual amount thereof, but they are very sure that they do not
 57 owe the said plaintiffs upon said advancements any sum of money ~~amount-~~
 58 ~~ing to any considerable sum, if any thing,~~ and they are sure that if they
 59 are given credit for all the lumber furnished by them according to
 60 its proper grade, and there are no erroneous charges made against them
 61 that the account between the said plaintiff and said defendants is
 62 very near even. Your respondents allege that they have ~~been~~ *even and are now* ready
 63 and willing to settle their account with the said Johnsons, and have
 64 called upon them for settlement and they refused to take the matter
 65 up for settlement, and your respondents aver that they have expressly
 66 tendered to the said Johnson the payment of any money which would be

just on the contract

67 found due upon such a settlement. Your respondents allege, believe and
 68 charge that the said plaintiffs have large sums charged to your
 69 respondents that is erroneous, and many items of money and things charged
 70 to them which they did not receive.

71 Your respondents will further represent and show unto your honor
 72 that from the time they first began to deliver lumber under the said
 73 contract and to have the same taken up and graded the said plaintiffs
 74 refused to properly grade and measure the said lumber. They allege
 75 that in the grading of the said lumber the said Plaintiffs by
 76 their agents undertook and did measure the said lumber for less
 77 number of feet than it contained and did grade and place the said
 78 lumber, at least a large portion of it, in a lower grade than that to
 79 which it belonged. They also positively refused to abide by the ex-
 80 press terms of the contract in respect to a provision of said contract
 81 whereby it was agreed that all four quarter six inch clear boards
 82 should be graded into ones and twos, whereas the grader absolutely
 83 refused to abide by the terms of the contract in this respect and
 84 placed all such boards in commons and culls. After your respondents
 85 had delivered many thousand feet of said lumber and said plaintiffs
 86 had continued to improperly grade the said lumber, at last your respon-
 87 dents refused to further abide by the said contract on their part as
 88 they had a right to do, and refused to deliver any thing further
 89 under said contract because the said plaintiffs would not give
 90 your respondents a proper grading ^{measurement} of the said lumber. Your respondents
 91 allege that they have been greatly damaged by the said plaintiffs in
 92 their refusing to grade said lumber properly and in their measuring
 93 the same for less than it contained, but it is not supposed that a
 94 court of chancery would take charge of that branch of the case for
 95 either party, but would leave them to their remedy in a court of law,
 96 and the fact is only stated here for the purpose of showing how unjust-
 97 ly the said plaintiffs are seeking to tie up the property in dispute
 98 in order that they may be enabled to further injure your respondents.
 99 But if your honor does take cognizance of the question of damages
 Your respondents invite a settlement of the account existing

as they have been damaged by the plaintiffs in the grading of the lumber and in the placing of the same in commons and culls. They say they have no more than \$1000.00 in the account.

100 between your respondents and the said plaintiffs; they are very anxious
 101 to have the account settled and the status of the parties fixed, if your
 102 respondents owe the said Johnsons any thing they want to know what it
 103 is and want to make payment of the amount thereof, if the said Plaintiffs
 104 owe your respondents any thing they want to be paid their money.

105 ~~deny they are insolvent but on the contrary~~
 Your respondents allege and will show unto your honor that it is
 106 ~~not true that they are insolvent, but upon the other hand they allege~~
 107 that they are perfectly solvent; your respondent J.P. Glass avers that
 108 he is worth over and above all his indebtedness the sum of \$ 2000.00
 109 of which \$ none is realty and the remainder is personal estate,
 110 that your respondent L.G. Glass is worth \$ 4000.00 over and above his
 111 indebtedness, of which \$ 3000 is realty and the remainder personalty,
 112 and your respondents allege that there are no judgement or other liens
 113 against ~~the~~ ^{their} said property.

114 Your respondents will further represent and show unto your honor
 115 that in the working of the said lumber in the said contract mentioned
 116 it is necessary for them to have a large number of teams and hands
 117 and it is a great damage to them to have all the lumber tied up under
 118 said injunction herein granted; a large amount of said lumber is now
 119 ready for market, is upon stick and should be placed on market or the
 120 same will greatly deteriorate and damage in value unless marketed,
 121 that the winter is coming on and that unless the same is marketed at
 122 once it will have to lie all winter and take the winter rains and can
 123 not be marketed until next spring, during which time the lumber will
 124 have been greatly damaged in value, and the said lumber ought not to be
 125 tied up in this manner, and if there is any thing due the said plaintiffs
 126 for advancements made it is their own fault that it is not paid, but
 127 respondents deny that there is any thing due, because they refused to
 128 make settlement with your respondents of the said account. Your respon-
 129 dents deny that they are trying in any way to cheat or defraud the said
 130 plaintiffs, but on the other hand they allege that the said plaintiffs have
 131 cheated and defrauded your respondents out of a large sum of money in the
 132 manner in which they have broken and failed to keep their said contract.

133 As alleged in said complaints bill
134 your respondents admit that it is
135 true that said complainants are part-
136 ners in the lumber business, and
137 that the contract marked exhibit "A"
138 filed with their said bill was in-
139 tered into by your respondents on
140 the one side with the said Com-
141 plainants on the other as partners;
142 but they aver that said contract
143 is void because said complain-
144 ants, are husband and wife and
145 that by virtue of section 2287 of
146 the code of Va for 1887 and also
147 at common law husband and wife
148 are prohibited from doing bus-
149 iness as partners. Your respond-
150 ents allege that said A. Johnson
151 and said N. C. Johnson are
152 now and was at the time said
153 contract was signed, husband and
154 wife, which fact they are ad-
155 vided makes said contract
156 void and incapable of being
157 sued upon either at law or
158 in equity. But if mistaken in
159 the proposition that said contract
160 was and is void they unequivocally

~~They~~
~~Your respondents~~ deny that they abandoned the said contract and refused to deliver any more lumber thereunder because the lumber had advanced in price, but they allege that the said plaintiffs broke their contract with your respondents in that as aforesaid they refused to properly measure and grade said lumber; and notwithstanding your respondents often complained and objected to the wrongful measuring and grading the said plaintiffs continued and refused to properly grade said lumber and refused to allow your respondents to put a competent man upon the stacks to represent ~~them~~; but your respondents allege that the said Plaintiffs placed upon said lumber stacks an incompetent, and your respondents believe, a dishonest agent to grade said lumber, who not only measured said lumber for less than it contained but placed a large quantity of it in a lower grade than that to which it ^{rightly} belonged, and when your respondents made objection ^{to the grader} upon one occasion, ~~he~~ gave as an excuse for his conduct that he had to steal to hold his job. Your respondents are advised that when the said Plaintiffs violated said contract on their part that they had a legal right to abandon it then and there; but they bore long with the plaintiffs in trying to get them to comply with their contract and grade said lumber properly, but "forbearance ceased to be a virtue" and your respondents in the preservation of their rights were obliged to abandon said contract. *Your respondents aver that there is now some 35,000 ft of this lumber on plaintiff's yards at Pennington exp. which*
 It will be seen from said contract that it is provided "and when as much as 50,000 ft has been delivered on any one yard the second party agree to settle for same, retaining its proportionable amount of money that may have been advanced on that yard"; your respondents allege that the said plaintiffs frequently violated and refused to comply with this provision of the said contract, and on the last lumber delivered from the Young lands the said plaintiffs refused and neglected to comply with this clause of the contract and have not as yet complied with it. And in many other ways have they violated both the spirit and letter of the said contract.

Your respondents aver that they are willing and able to execute

an indemnity bond to secure the said plaintiffs any sum of money which should be found due for advancements which has been furnished upon said lumber on said contract, that they are anxious to have a settlement of the said account and are ready willing and able to pay any sum which the said advancements amount to if it is any thing.

Your respondents are advised that as the account between your respondents and said plaintiffs is a long and complicated one, many items of which is disputed on either side, that it will be necessary to have a commissioner to ascertain and settle the account; that it will take a long time to litigate the matters in dispute, and in the mean time if said injunction should be enforced during the continuance of the litigation that much of said property would be lost or greatly lowered in value. They therefore pray that if the court will not dissolve the said injunction upon the coming in of this answer, that they be allowed to execute an indemnifying bond in lieu of the said injunction. They pray also for a settlement of the said account and the appointment of a commissioner for that purpose.

And now having answered said bill as fully as your respondents are advised that they should answer, pray to be hence dismissed with their reasonable costs and damages in this behalf expended.

Pennington Bros P.D.

Virginia Lee County, to wit:

I, W. E. Cleland a Notary Public
in and for the county of Lee and State afore said do hereby certify
that L. G. Gross this day appeared before me and made
oath that the statements made in the foregoing answer in so far as
they are made upon his own information ^{are} ~~is~~ true and so far as made
upon the information derived from others he believes to be true.
Witness my hand this the 12 day of Sept 1903.

W. E. Cleland

The Plaintiffs by their Counsel except-
to all that part of the within answer
embraced between lines 133 and 160 inclusive

(1) Because the statute referred to was
repealed by an act approved March 27, 1900
See Acts 1899-1900, p. 1240.

(2) Because if the law, it is a matter
that the defendants could not take
advantage of, having contracted with
the plaintiffs as partners.

Ans & Noel J. 9.

J.P. and L.G.Glass, Defts.,

ads: Answer

A.and N.L.Johnson, Compls.

filed Sept 18, 1903
H. A. W. Shaw
Judge

12 Cents
25 Cents
35 102

Pennington Bros.

ATTORNEYS AT LAW

JONESVILLE AND PENNINGTON GAP VA.

To the Hon H.A.W.Skeen, Judge of the Circuit Court for Lee County:

The joint demurrer of J.P. and J.L.Glass to a bill in chancery filed in the Circuit Court for Lee County vs. them by A. and N.L. Johnson.

The said Defendants by their attorneys come and say that the said bill is not sufficient in law to call upon them to answer, in the following particulars and for the following reasons, to wit:

1- Because the said bill prays for the specific performance of a contract for the sale of personal property without alleging that said property has an appretium affections, or sentimental, value attached thereton or that irreparable injury would be the result of the failure to keep the contract; and the remedy for the breach of all such contracts is ample at law and courts of equity will not interfere therewith.

2- Because said plaintiffs in said bill seek to enforce a lien on personal property without specifying any definite amount, or describing any particular property; said bill is therefore bad for uncertainty and indefiniteness. Said contract upon which the said suit is founded provides ~~that~~ that advancements are to be a lien upon the lumber at the particular yards upon which the advancements are made, and said bill does not in any way specify which lumber or what timber the lien is claimed ~~for~~ and with such pleadings it would be absolutely and utterly impossible for the defendants to know how to defend such suit with such allegations. Taking the allegations of the bill as true along with the contract made a part of it it would be impossible to found any decree upon it first because the plaintiffs claim no definite amount as a lien and secondly do not specify how much in each particular lot of lumber is claimed.

3- Because the said contract asked to ^{be} specifically performed is one involving a person ^{or} service in so far as the manufacture and delivery of the said lumber is concerned, and can not therefore be enforced by a court of chancery as it has no way of compelling compliance with its order.

(4) For multifariousness

5- For other reasons to be assigned at the hearing.

Peckington Bros P.D.

L.G. and J.P.Glass, Defts.

ads : Demurrer,

A & N.L.Johnson, Compltd.

¹⁸
Filed Sept 1903

Haw-Show

J. H. Jones

Pennington Bros.

ATTORNEYS AT LAW.

JONESVILLE AND PENNINGTON GAP VA.

~~LEE CIRCUIT COURT.~~

A. & N. L. JOHNSON
VS.
J. P. & *L* G. GLASS.

IN CHANCERY

PLAINTIFFS

DEFENDANTS.

Upon the calling of this cause it was admitted by counsel that Commissioner L. T. Hyatt, who was, by a decree of the last term, directed to state and settle the account between the plaintiffs and defendants, has not as yet made and filed his report; and the issue out of chancery in said decree directed to be tried by a jury, as to the damages sustained by either of the parties to this suit, if any, on account of the failure of the other party to comply with the terms of the contract between the parties, not having been so tried. By consent of the parties by their counsel, it is adjudged, ordered and decreed, that said Hyatt, Commissioner as aforesaid, do ascertain and report in addition to the duties heretofore assigned him in said decree, what damages, if any, the plaintiffs have sustained by reason of the failure of the defendants to comply with the said contract, and what damages, if any, the defendants have sustained by reason of the failure of the plaintiffs to comply with the said contract. Said commissioner in making said enquiries, will consider all the evidence already in the cause, and any other evidence either party may offer, and report his action and findings hereunder to the court. In ascertaining said damages said commissioner will be governed by the same principles as if setting as a jury. And this cause is continued.

Art. L. Johnson

vs Decree

J. P. & L. G. Glass

Em. Chey O.B.

No-7, page 535.

Enter this Decree.

HAW. 1111

Sept 29th 1904.

A. & N. L. Johnson, Plaintiffs

vs

L. G. Glass & J. P. Glass, Defendants.)

In Chancery.

This cause came on again this day to be heard upon the bill of the complainants and exhibits therewith, the demurrer of the defendants to said bill and joinder therein by plaintiffs, the joint answer of said defendants and exceptions to said answer, and the depositions of witnesses, and was argued by counsel: On consideration of all which and for reasons appearing to the court, the demurrer to said bill, in so far as the said bill seeks a specific execution of the contract, dated January 3rd 1902 between said parties, in regard to the delivery of the residue of the lumber mentioned in said contract, is sustained; and as to the residue of the defendants' demurrer, the same is overruled. And the court after maturely considering the exception to the defendants' answer on the point raised by said answer, that the complainants are husband and wife, doth sustain said exception. And the court having maturely considered the cause, together with the evidence and depositions of witnesses, both for the plaintiffs and defendants, is of opinion that the contract sued on dated January 3rd 1902, is a joint contract and not joint and several, and that only the lumber mentioned in said contract, and any other ~~poplar~~ lumber manufactured by the defendants jointly during the year 1902 shall be considered in this suit; and the court is further of the opinion that the matters of account involved in this cause and arising between the parties, are of such nature that the adjustment thereof should be referred to one of the commissioners of this court: It is therefore adjudged, ordered and decreed that *L. V. Hyatt* be and is hereby appointed a special commissioner for the purpose, who will, after giving the parties, or their counsel, ten days notice of the time and place of his sitting, take and state the

account between the plaintiffs and defendants charging the defendants with all moneys, notes, checks and merchandise properly chargeable to them on their joint account, and showing for what purpose and upon what lumber the same was paid or advanced to said defendants, and he will also give the defendants credit upon such account for any and all payments made, or lumber delivered by them, to the plaintiffs, under the said contract of January 3rd 1902; and he will report any other matter, or fact, deemed pertinent by himself or specially required by either party in this cause; and he will report in writing to this court his findings with the evidence upon which he bases his conclusion and report, and in making his enquiries and report, said commissioner will read and consider the depositions, and exhibits filed therewith, which have already been taken in the cause. And the court being of opinion that the question of damages, raised in the cause, on account of the alleged breach or breaches of the said contract of January 3rd 1902, is one that should be tried by a jury. On consideration whereof, the court doth adjudge, order and decree, that an issue be made up and tried at the bar of this court, to ascertain and try whether or not the plaintiffs have sustained any damages by reason of the alleged breach or breaches of said contract by the defendants, and if so how much; and whether or not the defendants have sustained any damages by reason of the alleged breach or breaches of said contract by the plaintiffs, and if so how much. And on the trial of said issue the plaintiffs are to maintain the affirmative as to the alleged damages sustained by them, and the defendants are to maintain the affirmative as to the alleged damages sustained by them. And this cause is continued.

A. & N. L. Johnson

vs } Decree

J. P. & L. G. Glass

Enc. C.P.D. No 7,
page 465

Enter this Decree

H. C. W. Sherr

May 19th 1904.

VIRGINIA,

At a Circuit Court continued and held for the County of Lee, at the Court house thereof, on Thursday the 19th day of May, 1904.

A. & N. L. Johnson

Plffs.

Vs. (In Chancery.

L. G. Glass & J. P. Glass.

Defts.

This cause came on again this day to be heard upon the bill of the complainants and exhibits therewith, the demurrer of the defendants to said bill and joinder therein by plaintiffs, the joint answer of said defendants and exceptions to said answer, and the depositions of witnesses, and was argued by counsel:

On consideration of all which and for reasons appearing to the Court, the demurrer to said bill, in so far as the said bill seeks a specific execution of the contract, dated January 3rd, 1902, between said parties in regard to the delivery of the residue of the lumber mentioned in said contract is sustained; and as to the residue of the defendant's demurrer, the same is overruled, and the Court after maturely considering the exception to the defendants' answer on the point raised by said answer, that the complainants are husband and wife, doth sustain said exception. And the Court having maturely considered the cause, together with the evidence and depositions of witnesses both for the plaintiffs and defendants, is of opinion that the contract sued on dated January 3rd 1902, is a joint contract and not joint and several, and that only the lumber mentioned in said contract, and any other poplar lumber manufactured by the defendants jointly during the year 1902 shall be considered in this suit and the Court is further of opinion that the matters of account involved in this cause and arising between the parties, are of such nature that the adjustment thereof should be referred to one of the commissioners of this Court:

It is therefore adjudged, ordered and decreed that L. T. Hyatt be and is hereby appointed a special commissioner for the purpose, who will, after giving the parties, or their counsel, ten days notice of the time and place of his sitting, take and state the account between the plaintiffs and defendants charging the defendants with all moneys, noted, checks and merchandise property chargeable to them on their joint

account and showing for what purpose and upon what lumber the same was paid or advanced to said defendants, and he will also give the defendants credit upon such account for any and all payments made, or lumber delivered by them to the plaintiffs, under the said contract of January 3rd 1902; and he will report any other matter, or fact, deemed pertinent by himself or specially required by either party in this cause; and he will report in writing to this Court his findings with the evidence upon which he bases his conclusion and report, and in making his enquiries and report, and said commissioner will read and consider the depositions and exhibits filed therewith, which have already been taken in the cause. And the Court being of the opinion that the question of damages, raised in the cause, on account of the alleged breach or breaches of the said contract of January 3rd, 1902, is one that should be tried by a jury. On consideration whereof, the Court doth adjudge, order and decree, that an issue be made up and tried at the bar of this court, to ascertain and try whether or not the plaintiffs have sustained any damages by reason of the alleged breach or breaches of said contract by the defendants, and if so how much, and whether or not the defendants have sustained any damages by reason of the alleged breach or breaches of said contract by the plaintiffs, and if so, how much. And on the trial of said issue the plaintiffs are to maintain the affirmative as to the alleged damages sustained by them, and defendants are to maintain the affirmative as to the alleged damages sustained by them.

And this cause is continued.

A Copy Teste: H. C. P. Ewing - Clerk.

A + N. L. Johnson
vs Decree
L. G. + J. P. Glass

L. T. Hyatt
Commissioner

Copy

Clerk 757

A. & A. L. Johnson

vs { Deceit

L. G. & J. P. Glass

The above styled chancery cause
on motion of the defendants,
came on to be heard before
H. A. W. Sherr, Judge of Lee County
Circuit Court, September 18th
1903, at Wise County Court House,
upon the ^{depositions and} answer of the ^{defendants} ~~defendants~~
which was filed at said time,
and also treated as affidavits
of the defendant, and other affi-
davits filed on behalf of the
defendants, and the plaintiffs.
bill and affidavits filed on
behalf of the plaintiffs and
was argued by counsel and
the judge not being fully
advised takes further time
to consider his judgment
and now ^{this} the 21st of Septem-
ber, 1903, being fully advised
it is therefore adjudged
ordered and decreed that the
injunction granted September

5th 1903, ^{at this time} he was not discovered,
but it is further adjudged
ordered and decreed that
the defendants be allowed
to make, execute and acknow-
ledge before the Clerk of Lee
County Circuit ^{court} an indemnity
bond with good re-
sponsibility, in the sum of \$4000⁰⁰,
~~conditioned~~ payable to the
~~defendants~~ plaintiffs, condi-
tioned to ^{pay} the plaintiffs all
damages they may sustain
by reason of the lumber in
the bill mentioned being
turned over to them ^{the plaintiffs} and
it is further decreed that upon
the execution of the aforesaid
bond ~~and~~ as above provided
and filed in the papers in this
cause, the injunction granted
Sept. 5, 1903, be and the same
is hereby dissolved.

H. A. W. Stone
Judge

To A. B. Mearns
Clerk

Entered
Oct 3 No 7 P. 352

In vacation before H. A. W. Stone, Judge of Scott County Circuit

Entered
H. A. W. Stone

The depositions of A. Johnson and others taken by agreement at the law office of E.W. Pennington, on the 3rd, day of February, 1904 to be read as evidence in behalf of the plaintiffs in a certain suit in equity now pending in the circuit court for Lee County, Virginia, wherein A & N.L. Johnson are plaintiffs and L.G. & J.P. Glass are defendants.

Present J.W. Orr Atty for the Plaintiffs, and

" E.W. Pennington for the defendants:

~~XXXX~~ A. Johnson after being duly sworn deposes as follows.

The evidence of this witness is objected, in all particulars, except on such points as may be in re-buttal, because he has heretofore been examined in behalf of the said plaintiffs.

Q.1. The defendants in their answer and depositions complain of the inspection and grade of the lumber delivered by them to the plaintiff. Will you please state what kind of inspection and grading were given to the defendants on the lumber delivered by them, so far as you have any knowledge.

Ans. Neither of the defendants ever complained to me, and I am satisfied that I gave them a better grade than would have gone into market. Nor did they complain to me of the inspection given by my inspectors.

Q.2. You have two items charged in your account against the defendants for handling lumber, please state how and where these charges were made.

The foregoing question is objected to because the witness has in his cross examination been asked and has practically answered the same question.

E.W. Pennington.

Ans. They were made against them because it was customary to charge the seller of lumber with the expenses of inspecting it; and at one time in a talk with them, I agreed with them if they would put the lumber where we wanted it, we would thereafter handle it at our own expense and did do so. I think they had been putting some of it before this where we did not want it.

Q.3. Did you ever promise the defendants to take the said charges off or release them?

Ans. No.

Q.4. Did the defendants or either of them, ever direct you you to go ahead and take up any part of their lumber, in their absence, and if so when and ⁱⁿ what manner?

Ans. Yes, -both asked me to do so, without ^{their} being present~~er~~ and one of them wrote to me about it on Dec., 8th, 1902, which letter I here file as part of my deposition marked "Letter L.G.Glass".

Q.5. Did the defendant J.P.Glass ~~xxxx~~ deliver any lumber at your mill after this suit was brought, embraced in his and L.G.Glass' contract, and receive pay, if so what payment did he receive?

Ans. He did from the Edwards yard; he got a trunk out of the store and has credit for the lumber on their account for the whole of it. But the credit for this Edwards lumber was not put on the books until after this suit was brought, nor until after the depositions were begun in this case.

Q. 6. Did the plaintiffs at any time urge and insist on the defendants delivering the balance of the lumber that they had failed to deliver under their contract.?

Objected to because leading. E.W.Pennington.

Ans. Yes.

Q.7. When you inspected and graded the lumber delivered by the defendants, state whether you assorted and piled it, according to the grade given to the defendants, or according to the grade of stuff you expected to manufacture out of it?

The foregoing question is objected to, because the witness has hereto ^{fore} told how piled the same.

Ans. I piled it according to way I expected to have it manufactured.

Q.8. Have you made ^{and} further enquiry and ascertainment in regard to a pulley, belt and ^{collar} charged to the defendants since you testified herein before, and if so what did you ascertain?

Ans. I have. And am informed that the pulley, shaft and collar are ^{now} at my planing mill, and that the pulley has been mended as I directed.

Q. 9. Taking the statement of R.C.Duff in his deposition as though

correct, as to the amount of lumber purchased by him from the defendants, of the C.V. Young and Ozro Young lumber have you calculated the same so as to state the number of feet of each grade, and including the lumber which Letcher Horn got, and have you a calculation of it, and what does your calculation show? and including 30,000 feet scattered along the road and not yet received by Mr. Duff?

Ans. I have made a calculation which shows the grade estimated, of said lumber, and which also shows the damages claimed by me by reason of the failure of the defendants to deliver the same to me for the plaintiffs. The only estimation I make is on the Horn lumber and the said 30,000 feet. The other as to grade and amount having been given by Mr. Duff in his deposition.

Q.10. State whether or not the plaintiffs claim damages on account of the failure of the defendants to deliver the lumber to them and what amount and in what manner they claim damages.

The foregoing question and any answer thereto is objected to because the question of damages in this suit is not properly pleaded even if the court had jurisdiction of that question and because the court does not have jurisdiction to determine that question in this suit.

Ans. The statement above referred to, shows the amount of damages claimed by the plaintiffs on account of the failure of the defendants to deliver said lumber and including 18,000 feet ^{to go} of oak lumber not delivered from the Edwards yard, and I here file the said statement as part of my deposition marked "Statement of Damages No. 1".

Q.1. 11. Do you consider the plaintiffs have sustained any other damages on account of any ~~xxxxxx~~ other failure by the defendants to comply with their contract with the plaintiffs, if so state what it is and on what account.

The foregoing question and any answer thereto is objected to for the same reasons as before stated, W. Pennington for Defts.

Ans. Yes. I do so consider that they have sustained further and other damages by the defendants on ~~by~~ misrepresentations reselling to the plaintiffs certain lumber that they had sold them theretofore and obtain-

taining a higher price for the same. I have prepared a statement showing this claim for damages and which I here file as part of my deposition Marked "statement of Damages No.2".

Q.12. You have stated heretofore in your deposition that the defendants were indebted to you on account of advancements made on lumber, store account, etc. \$1995.50; Have you since then had your account carefully made off from your books of original entries, showing your charges against the defendants and credits given them on account of lumber delivered, and if so, file the same as a part of your deposition, Marked "Defendants' Account".

Ans. I have and here file the same as requested.

Q.13. What amount were the defendants indebted to the plaintiffs on the 1st, day of January, 1903, according to the statement you have just filed.

Ans. \$2660.70.

Q.14. Do you claim interest on that sum from that date ~~xxxx~~ and if so why?

Ans. I do; because the credits for that year ¹⁹⁰³ about equal the debits and because the contract provides for interest, that is for 1903.

Q.15. In your statement of advancements made to the defendants in your deposition heretofore, did you mention or overlook the check for \$580.00, to L.G. Glass, dated March, 7th, 1903.

Ans. I think, I probably overlooked it. but it is charged to the defendants in my account, and is filed with the other checks, etc.

Q.16. State whether, in your account against the defendants, you have erroneously charged them with a check for \$300.00 making said charge twice, and not correcting it afterwards, on the Hinkle, Fletcher and Banner lumber?

The foregoing question is objected to because the witness has heretofore been asked in his cross-examination about this same charge and has undertaken there to explain the same.

Ans. It was erroneously charged by being charged twice, but this was afterward corrected by crediting the amount back to the defendants. And this leaves no error.

Q.17. Are the defendants entitled to any damages from the plaintiffs on account of mis-inspection, or improper grading of their lumber?

Ans. No.

Q.18. Is it or not a fact that in re-sawing and manufacturing from the rough lumber, it can often ~~can~~ be so done so as to raise the grade, and if so, explain how this may be done?

Ans. It can be done on common and culls, by sawing off, or planing off the defect which lowers its grade; not many boards are the same on both sides, for instance take a board that on account of some defect on one side and near the edge, it is ⁱⁿ that ⁺ state in the rough a common; but when re-sawed and worked, it may and does often happen the working of such a board leave it a higher grade.

Q.19. In the statements which you have filed which are intended to show the damages claimed by the plaintiffs against the defendants, how do you arrive at those damages, or at the difference between your contract price and what you could have realized out of the lumber had it been delivered to you,

Ans. In selling in the rough, I base my figures on the market price, and likewise on the dressed stuff.

This answer is objected to, unless the witness should have stated on what market he based his calculations. If on a market away from Pennington Gap, then such evidence is not admissible, for the lumber by the contract was to be delivered to the plaintiffs at their mill at Pennington Gap.

E.W. Pennington. For the defts.

Q.20 Could have the plaintiffs have ~~xxxxxxxxxxxx~~ conveniently have purchased during the year, 1902 delivered at their mill at Pennington Gap, a like amount of the same kind of lumber that the defendants failed to deliver to them under this contract at the same prices.

Ans. No, not by any means.

Q.21. Did L.G. Glass at any time try to get the plaintiffs to release the defendants from delivering the Ozro Young lumber, and if so, why, and did they do so?

Ans. He tried to get us to release it; he claimed that it was poor

Q. 22. Did lumber advance in price, between Jan., 1902 and Jan, 1903?

Ans. It did until the fall of 1903.

Q.23. How much of the lumber delivered by the defendants to the plaintiffs was cut 4/4 X 6 inches and multiples of six inches, would be your estimate ~~be~~.

Ans. I don't think any of it was cut that way, unless it was the cull part of the log.

Q.24. L.G.Glass in his deposition states that he asked,insisted and
climed while the plaintiffs were having his lumber graded that all
the 1 X 6 ich clear boards should be graded as 1 & 2s.State whether
this was true,or how it was?

Ans. I don't ~~ever~~ remember the question ever being raised at all. He would sometimes complain like every body else does, but when I would show him the defect in the board he would decide with me, and every thing would seem satisfactory.

Q. 25 In inspecting and grading and taking up lumber at your mill, please state in detail how it is done and how the lumber is disposed of after it is inspected.

The foregoing question is objected to because the witness has heretofore made his statement on the same or similar questions.

E.W.Pennington, for Defts.

Ans. We inspect the lumber ~~the~~ according to the rules of standard inspection, and call the grades ~~the~~, ^{made} that the inspector and the man selling the lumber get on the piles if he wants to, ~~gets on the piles~~ of ^{the inspection} lumber himself, and with a board rule turns over the board, looking at both sides and both edges, and then calls out the grade and number of feet in each board, and it is taken down on the tally sheet as it is called out; the board is then taken off the pile, ~~and xxxxxxxxxx~~ and by a man for that purpose is taken charge of by him and graded ^{and placed} according to the grade as ^{be} is best adapted to the purpose for which it is intended to be manufactured ^{it}

~~Qx22x~~ And this is done regardless of the grade given from the pile.

Q.26. State how much of the Glass lumber that was delivered to your mill was sawed into 4/4 X 6 Inch boards and multiples of six inches, or how the lumber was generally sawed?

Ans. I ~~don't~~^{think} ^{but} there was[^] very little of it sawed that way, except in the sawing of the last part of the log, which was generally cull; the best timber was all sawed 5 and 6/4, and a little bit of 8/4, regardless of waste.

Q.27. Was any of the lumber delivered by the defendants damaged on account of having been sawed out of logs on which the sap part had rotted or decayed, and if so how much, and what was the effect on that lumber?

The foregoing question and any answer thereof is objected to because leading and because evidence in chief.

Ans. There was at least from 50,000 to 100,000 feet of that part which was delivered last summer had been sawed out of that kind of logs; the sap was doty, so much so as to reduce the grade of the board on that account; I believe it would have reduced the grade of the common and "good" fifty per cent by reason of that dot. Mr. L.G. Glass and myself worked on this damaged lumber a day or so, and he then went home and requested me to go on through with it and told me to do ~~him~~ the best I could with him on it, and this I did. I think^g gave him a better grade than the market.

Cross, examination.

Q.1. From what yard or yards did the doty lumber come, if you know?

Ans. I don't remember now; but it was hauled in the fore part of the season last year; I believe[^] ^{a part of it} was turned in as ^{a part} ~~xxxx~~ of the Elk, Young and a part of it as the C.V. Young lumber.

Q.2. How much of this doty lumber came from the C.V. Young lumber as near as you can remember, and how much from the Elk. Young lumber?

Ans. I don't remember.

Q.3. How much of it had been taken up when L.G. Glass told you to go ahead and take it up and do with him the best you could? and from which yard, that is, the said doty lumber?

Ans. I don't know, but we had worked at it a day or two.

Q.5. With reasonable work how much lumber can be taken up in a day by you as an inspector?

Ans. The way we have to handle it on our yard, I guess 12,000 to 15,000 feet.

Q. 6. What per cent of the whole of the poplar lumber which you received from the defendants was 4/4 inch thick, would you say? and why do you say so, that is how do you make up your estimate?

Ans. I could not state, because I paid no attention to it, and because it was tallied all together, except with a tally or ~~ten~~^{two}, where the price was higher.

Q.7. Did you see any of the logs out of which the lumber was sawed which you got from the defendants, before it was sawed into lumber?

Ans. No.

Q.8. You and perhaps other witnesses in this case in speaking of the grade of lumber, mention a grade as "good"; please tell what is meant by the "good" grade of lumber if you know?

Ans. We mean by "good" first and seconds, as expressed in the contract.

Q.9. From your deposition in chief taken in this case, and found on pages 4, 5, 6, which sets out the lumber which you received from the ~~xxxxxxx~~ defendants, I have made some calculations, which are intended to cover all the poplar lumber for which you have given credit on your books on the accounts of the Glasses, and also showing the number of feet and grade from each yard as inspected by you and your employees, and the per cent of each grade as compared to the whole: Please take my calculation look over it, compare it with your said deposition, and state whether this calculation is substantially correct; if so, please file it with your deposition marked "Calculation No. 1".

Ans. I have not gone over each yard separately; but as to the total amounts, I think the calculations are substantially correct, that is 13 and over per cent 1 & 2s.; 48 and a fraction Commons, and the residue culls, and I here file the paper shown me as requested me.

Q. 10. From the deposition of R.C.Duff as found on pages 44 and 45 ,I have made another calculation which is intended to cover all the 1& 2 ,Common and shipping culls of the poplar lumber which he said he had gotten from the defendants: Please take my calculation and look over it,and compare it with Mr.Duffs deposition,and state whether this calculation is substantially correct;if so,please file it as a part of your deposition,marked "Calculation No.,2".

Ans.I have looked over this calculation and think it is substantially correct,and here file the same as requested. But this calculation does not include the mill culls which Mr.Duff said he got.As to the mill culls which came in with the lumber which we got from the defendant,we took them at one-half their measurement as shipping culls, and this arrangement would ^{raise} ~~lower~~ our per cent of ship culls,and lower our per cent of the other two grades. I notice that Mr.Duff got from the Glasses 5058 feet mill culls,which if they ^{had} ~~have~~ been counted as one-half ship culls,then the per cent of the lumber which he got would run 20 and a fraction per cent one and twos,44 ~~per~~ and a fraction per cent commons and the residue ship culls.

And further this deponent saith not.

(Signature inserted.)

C.C.Duglas another witness of lawful age,after being duly sworn deposes and says:

Q.1. Give your name,age residence and occupation.

Ans. My name is C.C.Duglass,I live in Pennington Gap,Va.,am 34 years old,and in the timber business for the Pennington Lumber Company.

Q.2. Were you ever present when any of the lumber which the palintiffs got from the defendants? *was inspected.*

Ans. Only for a short time.

Q.3. Did you on that occasion or at any other time have with LG. Glass a conversation in regard to the inspection of said lumber and if so please state hwen,where and what was said?

Ans. While Mr.Johnson was sick and after he had left here for the west

and about the first part of July, 1903, at the plaintiffs' planing mill. He ~~xxxx~~ came and wanted to change inspectors, he did not want Sam Stewart to grade his stuff, but wanted to furnish a man for that purpose himself; the reason he wanted another man, he said Mr. Stewart ^{not had} had experience in grading lumber, and as the contract said Mr. Johnson would do the grading and as Mr. Johnsons was sick he thought he had a right to furnish an inspector himself; I told him as Mr. Johnson had Stewart there for the purpose of grading his lumber that he could grade it and if he did not think Mr. Stewart would do him right or ^{not} was doing him right in the grading, I would get Mr. Yarbrough to do it; he wanted to get Mr. Dotson, and I told him Mr. Dotson was running an opposition business here in the lumber business, and for that reason I did not think there was any business in that; he and Stewart then went on and graded the lumber.

Q. 4. State whether you ever had a conversation with J.P. Glass, about this lumber matter, and if so when, where and what was said between you.

Ans. I did, at Mr. Johnsons store in Pennington Gap, and after this suit was brought; and in that conversation he ~~xxxx~~ mentioned something about the trouble Mr. Johnson and L.G. Glass were having about the lumber, he said he was sorry that they had to have a suit, that he and Mr. Johnson had gotten along always; and that Mr. Johnsons had given him a better inspection than he could have got he thought any where else, and where he missed it, was not coming to Mr. Johnson and getting a release from the contract which he and L.G. Glass had made with Mr. Johnson, when he and L.G. Glass had dissolved partnership.

Q. 5. L.G. Glass has stated in his deposition that on the first day of July, 1903, some lumber was taken up of which he kept the tally sheet which tally sheet he filed with his deposition, dated July, 2nd, 1903, and that ^{this} tally sheet was left on the board, on the evening of July, 1st, 1903 and that he delivered the board to Wade Ellison with said sheet on it, and that Ellison put it into the safe; that some time after this he came back and called for the board and Ellison took it from the safe and that he tore it off the board ~~xxxxxxxxxxxxxxxx~~ and gave it to

you;please state how this was?

Ans. I never haldled none of the tally sheets of the Glass lumber. I remember no such occurrence as detailed by said Glass. If it had have occurred,I think I would have remembered it.

Q.5. W.E.Glass in his deposition states that his brother L.G.Glass tore a tally sheet off a board on the porch of Johnson's store, and handed it to you;and that you went back into the store with the sheet;please state whether this occurred or not?

Ans. It did not.

Q.6. Did L.G.Glass ever say any thing to you about wanting the plaintiffs to release the defendants from delivering the lumber from the Ozro Young yard,if so,when,where and what was said?

Ans. He did;and while Mr.Johnson was sick,in Pennington Gap,and between Mr.Johnsons store and the bank;he came to me and wanted me to release some of the timber on one of the Young's lands,and I think it was the Ozro young land;he said he had named the matter to Mr.Johnson before he got sick,and he thought if Mr .Johnson was able he would have released it,and wanted me to release it; I told him,that Mr.Johnons had made the contract and I was going to live up to it,and expected for them to do the same thing;that I had no right to release any contract which he had made.

Q.7. State whether you observed any damaged lumber delivered by the defendants,and if so the nature of it and how much?

Ans. Yes;I noticed Mr.Stewart in taking up a pile of lumber,I could not say how much was in the pile,it was damaged;it looked to me like the lumber had been cut out of ~~wuld~~ logs;^{and} ~~that~~ ~~they~~ looked disfigured,colored,or else the lumber had laid in a bulk.It was a white mold on it,not black.

Q. ~~EXX~~ Sate whether from your observation ~~of~~ the Glass lumber delivered,it was cut into boards 4/4 X 6 or multiples of 6 inches, or how it was cut cut.

Ans From ~~want~~ I could see of it,it was cut random widths. Some of

it was cut 5/4, 6/4 and 8/4 thicknesses, but I don't know how much.

Cross - examination

Q.1. Is it not a fact that you drank a little beer or liquor last July, 1903?

Objected to
Ans. Yes sir, I did.

Q.2. ~~Wxxxx~~ If you drank some along about July, 1903, could not Mr. Glass have given you the tally sheet spoken of by him and you, while you were drinking and you have forgotten it?

Ans. No. Because I would not have taken it had I have been drinking when he offered to me.

Q. 3. Can you tell how a log should have been sawed so as to get the most and best grade out of it unless you had have seen the log before it was sawed?

Ans. No.

Q. 4. Can you state the defendants did not saw as much of the timbers into 4/4 X 6 and multiples of 6 inches, and at the same time hold the grade up?

Ans. I think I can.

Q.5 If you can, state how you can do this?

Ans. ~~xxxxxxxxxxxx~~ Because in looking at the lumber, I did not think there was as much of that kind as there ought to have been; they ^{were} I never saw the logs before, sawed, except a part of one of the C.V. Young yards

Q.6. Without seeing the logs as they were sawed, can you state that they could have been sawed into 4/4 X 6 and multiples of 6s, without waste or without lowering the grade?

Ans. No.

Q. And further this deponent saith not.

C. C. Douglas

S.M.Stewart another witness after being duly sworn deposes as follows:

Q.1. Give your name age, residence and occupation?

Ans. My name is Sam.M.Stewart, Reside in Pennington Gap, Va. I am 21 years old, and inspecting Lumber for the Pennington Lumber Co., the plaintiffs in this case.

Q.2. How much experience have you had in grading and inspecting lumber and for whom have you done such work.

Ans. I have been inspecting for Mr. Johnson between three and four years. I worked for the Sotnega Coal and Coke Co., 8 months, I think, but for no ones, but have inspected other lumber.

Q. 3. How much of the lumber delivered by the defendants to the plaintiffs did you inspect?

Ans. I can't say how much there was of it; but all the last that was taken up while Mr. Johnson was sick, I inspected. I think I had 89,000 feet on my tally sheets; and Mr. Davidson tallied about one and one-fourth days, that I did not have on my tally sheets. The two together would have made about 119,000 feet; I inspected what Davidson had on his tally sheets.

Q.4. Tell what kind of inspection and grading you gave the defendants on the lumber inspected by you?

Ans. I gave him the inspection that accorded to the rules for inspection. And I thought that a fair inspection.

Q.5 State whether the defendants or either of them made any complaints as to your inspection, if so, the extent of their complaints, and ^{how} the matters were adjusted, if adjusted?

Ans. L.G.Glass complained ever now and then. I would show him how the board was and when I would show him how it was he give to me, and become satisfied, and when he did not become satisfied, we would lay the board out. The first day we took up we laid out some boards, 3 or 4, and that night before quitting time, we looked at the boards, and he let me take them at my inspection. And the last time

he come over we laid out some, but it was laid out for some one else to inspect. There was ~~4~~ 340 odd feet of it. This was taken out of about 90,000 feet which I inspected. The 340 odd feet was inspected by Mr. Lawson; ~~and~~ we agreed that he do it. Only one board difference I think in my inspection and Mr. Lawson's.

Q. 6. State whether L.G. Glasses differences with you were any more extensive or serious than you usually have with parties selling lumber and inspected by you?

The foregoing question is objected to because leading, and because immaterial.

Ans. I think not.

Q. 7. Did you or not observe in the inspection of this lumber, any boards that seemed to have been sawed out of damaged logs, or any thing of the kind? If so, how was it?

Objected to because leading.

Ans. There was plenty of it that seemed to have been sawed out of rotten sap logs or the lumber had been damaged after it had been sawed. And this lowered the grade of the lumber.

Q. 8. Was the defendant J.P. Glass present when you were inspecting and if so did he make any complaint, or what did he say about it?

Ans. He was ~~a~~ present some when we inspected some of his lumber, but did not stay very long. Mr Davidson and myself were on the stack and J.P. Glass came upon the rick and watched us a little bit, said he did not think it was any use for him to stay there and watch for he said he thought we would do him fair; he left and I saw him no more.

Q. 9. Did he on any occasion when you was inspecting the lumber, say to you that if you was going to steal his lumber he would leave and get him a cigar, or words of that effect?

Ans. No, not to me, nor to ^{any} one else, that I heard. He never did make any complaints to me or to any one else in my presence about the inspection.

Q. 10. Did either of the defendants ever complain to you that you

was stealing their lumber ^{by} your inspection, and you replied to them that you had ~~to~~ steal to hold your job or words to that effect.

Ans. No. Mr. Glass would joke sometime with me, and if I said I had to steal to hold my job, I do not remember it; if I did say it, it was in a joke, and I did not mean it.

Q. 11. Did the plaintiffs ever instruct or request you to inspect lumber unfairly to their advantage while you have been working for them.

Ans. No.

Q. 12. What ~~if any~~ instruction did they give you if any?

Ans. To do every body fair and honest. And that was always what I did; I tried to make Mr. Johnsons whole, and I ^a never gave any body any thing.

Q. 14. Was W.E. Glass ever present when you was inspecting, and if so did he make any complaints as to you grading the lumber?

Ans. He was hauling lumber for L.G. Glass while I was taking up the lumber; but he made no complaints. He was on the rick once or twice while I was taking the lumber up.

Q. 15. State whether the drivers threw any of the lumber in places where the plaintiffs did not want it, or how this was?

Ans. Yes, they did; they put some on the North side of the road and they wanted it on the south side; we had to carry across some 30 yards and ^{it} could have been unloaded on the south side where we wanted it.

Q. 16 State whether you had a conversation with L.G. Glass at any time at which he wanted J.M. Davidson to inspect and if so, what was said and done in regard to the matter?

Ans. Mr. Glass never said any thing to me about wanting Mr. Davidson to take up his lumber; ~~xxxx~~ I understood that he had requested Miss ~~Myrtle~~ Johnsons to let Mr. Davidson to take up the lumber I met him near P.F. Prices' house and he said something about going back and taking up the lumber, (we had quit one-half a day) and I told him I had heard he did not want me to do the work, and he said he thought I was honest and would do him right and he wanted us to go back and take it up, and we did do so.

Q. 17. Did not L.G. Glass tell you after all the lumber was inspected that he was satisfied ?

ANs. He did; after all the lumber had been taken up and he started home I asked him if he was satisfied and he said that he was.

Cross-examination.

Q.1. In inspecting the lumber for the Glasses, state whether you found any clear ^x4/4, 6 inch boards, if so in what grade did you put them?

Ans. Yes I found a very few, and I put them in the commons.

Q. Do you remember taking up any of the Glass lumber about the last days of June and the first days of July, 1903; if so, what lumber was it, if you know?

Ans. I did take up a part of the evening of the last day of June, 1903 and all day on the first day of July, 1903. But I don't know what yards it came from.

Q. 3. What was the prices of the lumber if you remember that was taken up on the last day of June and the first day of July, 1903, ~~if you remember~~

Ans. I don't remeber; Mr. Glass gave them to me, I think, and I put them on the tally sheet I think.

Q.4. Don't you remember that you took up lumber that was at two different prices per thousand for the same grade, and that on account of some of it being under one contract and some under another contract.

Ans. I did on those ~~days~~ ^{at} take up lumber that was different prices per thousand for the same grade.

Q. 5. Do youx remehber the prices per thousand for the ones and twos for the two lots, if so what per thousand?

Ans. My best recollection is that for one lot it was at ~~at~~ \$28.00 per thousand for ones and twos and the other was for ~~xx~~ \$23.00 per thousand feet. *for 1 & 2s -*

Q.6. What is your best recollection as to the amount taken up in the lot on the last day of June and the first day of July, 1903 that was \$28.00 per thousand for the 1 & 2s; and also how much of it in the lot that was \$23.00 for the 1 & 2s?

Ans. I have no idea now at all how this is. I don't remember.

Q. 7. ~~If I understand you in your deposition in chief, you do not mean to say that you did not tell Mr. L.O. Glass you had to steal to hold yet~~

Q. 7. Who assisted and was present while you were taking up the lumber on the last day of June, and the first day of July, 1903, if you remember?

Ans. Mr. J. M. Davidson and L. G. Glass, and we had a man on the ~~rick~~ rick with us, but I do not remember who he was.

Q. When you quit work on the evening of July, 1st, 1903, did you all not expect to go back and work on the lumber the next day, that is on the 2nd?

Ans. Yes, I think we did intend going back and work on the 2nd;

Q. 9. Why did you not work at the grading on the 2nd, day of July, 1903, if you quit the evening before with that intention? What happened that you did not work on the 2nd.

Ans. I think it was because Mr. Glasses wife or some of his children got sick; I know he was telling me how bad they were when he came back next time.

Q. 10. Did not Mr. Davidson the next morning after the ^{1st} ~~2nd~~ day of July 1903 tell you, or did you not hear in some way that he had gotten a letter or telegram that some of his folks were sick at East Big Stone Gap, and did he not leave that ~~day~~ morning on the 7 O'clock train for his home at East Big Stone Gap, and was not that the reason you did not work on the 2nd day of July, 1903?

Ans. I remember that he went home that morning, but I did not know that any of his folks had been sick until after he had been up there a day or two. I heard nothing about him getting a letter or telegram that morning.

Q. 11. What did you do with the tally sheets of the lumber inspected by you on the last day of June and the first day of July, 1903, if you remember?

Ans. I never had them at all; Mr. Davidson had them; he made them; as I called off a board he would put it down.

Q. 12. Do you remember whether L. G. Glass kept a tally also of the lumber inspected by you on the last day of June and the first day of July, 1903?

Ans. He was present on those days and also kept a tally.

Q.13. On what kind of paper did Mr.Glass,if you remember keep his tally;do you think you would know the paper if it were now shown to you?

Ans. It was kept by him on the same kind of paper that we used;I mean the paper that Mr.Davidson used,or at least it seemed to be the same size and kind.

Q. 14. Do you remember seeing L.G.Glass on the Morning of the 2nd day of July,1903,if so where?

Ans. I think I did at the planing mill,which was only about 50 yards from where they had their lumber?

Re- examination by plaintiffs.

Q. 1. Was any lumber inspected on July,2nd.,1903.

Ans. No,

Q.2.When did you next inspect after July,1st,1903?

Ans. Several days after the 4th of that month.

Q. 3. When do you date your tally sheets on the day of inspection or on some other day?

Ans. On the day of inspection;we date them when we begin.

Q. 4 How much lumber was inspected by you on June 30th and July 1st, 1903?

Ans. I don't remember exactly;but something over 19,000 feet.

Q.6. I beleive you have stated you inspected about one-fourth of June 30th and all day July,1st,1903;is this correct?

Ans. I think so.

Q.7. State whether 19,000 and upwards of feet is a reasonable amount for being inspected in one and one ~~and~~ fourth days?

Ans. Yes,the way we had to handle it,is was.

Q. 8. State whether you could have inspected ~~xxx~~^{ten} thousand feet additional during that time?

Ans. No,I think not.

Q. 10. Have you any knowledge of any lumber ~~of~~ being inspected during the 1 & 1/4 days mentioned that was not reported,dated and turned in on July,1st,1903,and that was intened to be carried over and embraced in an inspection on July,2nd.1903.

of any being carried over
Ans. I know nothing myself; I heard .L.G.Glass say after he came back that he and Davidson had figured up the lumber which was taken up before and ~~xxx~~ they were only 6¢ apart.

~~XXXXXX~~ And further this deponent saith not.

Sam Stewart

Vint Woodyard another witness after being duly sworn desposes as follows:

Q. 1. Give your age, residence and occupation.

Ans. I am 32 years old; reside in Pennington Gap, Va., and mechanic in occupation; I have run Johnsons planing mill for several years I was employed by Johnson superintending his planing mill etc. along about July, and Auhust, 1903.

Q. 2. State whether J.P.Glass while you was wor king for the plainti ffs, proposed to sell to you for the plaintiffs any lumber and if so tell all about it?

Objected to because immaterial.

Ans. Along about the last of July or the first of August, 1903, J.P.Glass came to me and wanted to sell me a yard of oak logs to be delivered to Occonita. He asked ~~xxxxxx~~ me what I would give him for the lumber delivered at Occonita, and I gave him prices, but he said he could beat that, and we did not trade. He offered to sell the logs on the yard or the lumber delivered at Occonita.

And further this deponent saith not.

Vint Woodyard

J.M.Davidson another witness after being duly sworn desposes as follows:-

Q. 1. Give your age, residence and occupation?

Ans. I am 46 years old, reside at East Stone Gap, but I am now and have for some time been working for the plaintiffs at Pennington Gap; I am a lumberman.

Q. 2. State whether you assisted in taking up any of the Glass lumber on June 30th, and July 1st, 1903., and if so what was done on those days

Ans. I did; I tallied for Sam Stewart; L.G.Glass was alos present and

tallied with us. We began on the evening of June 30th, and worked about half of that evening, and then next day, July, 1st we worked all day. We took up 19,833 feet; after we quit work at J.B. Harbers house we counted up our tallies and we differed only 6¢; I had it six cents more than he had it. After the train came the night of July 1st, I got a letter that my little girl was sick; this I reported to Mr. Glass, and that I had to go home, and ^{if} they went on with the work, he and Mr. Stewart would have to do it. The next morning, that is on the morning of the 2nd, Glass said he would also go home and not take up any thing further at that time. I turned over all the tallies which ^{we had calculated on the night of the 1st} ~~X~~ ~~xxx~~ to Wade Ellison the next morning, and he started up stairs to take them to Miss Myrtle Johnson as I directed him. I went home on the morning of the 2nd of July, 1903, and came back on the night of the 5th, and went back home the same night. I came back again on the morning of the 13th.

~~QxxQ~~ Q. 3. State whether the plaintiffs have given the defendants credit on their books for a sum equal in amount to the amount calculated by you and Mr. Glass on the tally sheets above referred to.

Ans. Objected to because the books are the only evidence that should ^{Said} or can be looked to and not what the witness has seen on ~~his~~ books.

Ans. There is a credit on Mr. Johnson's book which corresponds in amount to the sum ascertained by Mr. Glass and myself.

Q. 4. State whether the 19,833 feet of lumber taken up by you all June 30th and July, 1st, 1903 was as much lumber as you all could reasonably handle in that length of time?

Objected to because argumentative, etc.

Ans. Yes, taking into consideration the way the lumber had to be handled, it was a reasonable amount for that time.

Q. State whether you had a conversation with L.G. Glass in regard to lumber which he claims to have been taken up on July, 2nd, 1903, if so when and where was it and what was said?

Ans. ^{At the} Beginning of the taking of the depositions in this case at Judge Pennington's office in Pennington Gap, L.G. Glass took me out

and asked me if I remembered how much lumber we took up on July, 2nd I remarked to him, that we took up none on July, 2nd, and he seemed very positive that we did take up on the 2nd, I told him he was mistaken, for I went home on the morning of the 2nd; he still seemed to think we did take up on that day. I told him I could convince him by going to Harbers where we boarded, as Harber had both of our board bills there.

Q. 5 How much of the Glass lumber did you ^{assist} in taking up.

Ans. I assisted on ^{four} ~~three~~ occasions, two ^{in taking up the lumber in taking} for L.G. Glass, and two ^{up the P. Glass lumber} for the plaintiffs. I do not remember the amount taken up.

Q. 6. State what complaint if any was made by the defendants in regard to the inspection of the lumber, when you was present.

Ans. Neither L.G. nor J.P. Glass ever made any complaint to me or in my presence as to measurement or inspection, up until the suit between these parties was begun or instituted. They always spoke of being satisfied with Mr. Johnson's measurement and inspection until after this suit was brought. Never heard them say any thing against that of Stewart until this suit was begun.

Q. 7. State whether you ever made a trip to Wallen's creek where this lumber was sawed, and obtain any information in regard to the defendants moving any of the lumber in any direction other than towards Pennington Gap.

Objected to because the question can not be answered without repeating what some body has said, and which would be hearsay.

Ans. ~~XXXXXXXXXX~~ I heard that the Glass boys were fixing to move lumber in the direction of Duffield; on the 26th day of July, 1903, I went to Wallen's creek to ascertain the facts. I met L.G. Glass and approached him on the subject, he told he was moving lumber to Duffield, said it was the C.V. Young lumber from the Dry creek yard, and said he intended to move more as he could get nearly twice as much at Duffield, counting all grades as Mr. Johnsons was giving him. He said he was ready to settle with Mr. Johnson and pay him what he owed him.

Q. 8. Were you acquainted with the C.V. Young timber so as to state where it was sawed.

Ans. Yes; I ~~xxx~~ was not acquainted with the logs; there was one yard called the Dry creek yard, another known as the Mountain yard, and another yard known as the Ozro Young yard, those were the yards that I ^{new} ~~kw~~en.

Q. 9. Did you at any time carry a letter from Mr. Johnson in reference to J. P. Glass to the Lumber, and did you or not have a conversation with J. P. Glass him, if so what ~~xxxxxxx~~ was said.

Ans. I did. I had started to Hunters Gap with it, and met him this side of his home. I delivered the letter to him; he read the letter, said he had also received a letter from Mr. Johnson on same subject, that he was then on his way to Pennington Gap, to see Mr. Johnson in regard to the matter. Some time before this occasion I was at Mr. Glass's house, he said he was sorry this matter had gotten up, that Mr. Johnson had always treated him right.

Q. 10. State how the lumber inspected at the plaintiff's mill is disposed of after inspection, after it is inspected ~~it~~.

Ans. Generally there is ~~man~~ on the rick who calls ~~xxxx~~ it out for the mill, and it is disposed of according to his directions. It is disposed of according to what is expected to be made out of it in the mill.

Q. 11. Did you at any time hear a conversation between A. Johnson and L. G. Glass in regard to the plaintiff's releasing the defendants from delivering the Ozro Young lumber, if so please state when and where, and what was said.

The foregoing question is objected to be cause propositions of trade, or favors to be asked can not be taken against a party.

Ans. I did, hear such a conversation either in May or June, 1903 at Mr. Johnson's lumber yard. Glas asked Johnson if he would release him from the Ozro Young yard, as the ^{as} distance was such ~~to~~ costs him too much to Pennington Gap. Johnson told him if he would deliver him as much good lumber as that he would do it, at the same price.

Q. 12. How much farther from this place to the place where the Ozro Young lumber was manufactured and to Duffield.

Ans. I think it would not be more than a mile further from the place where the Ozro Young yard was sawed to Pennington Gap, than from that place to Duffield.

Q. Cross - examination.

Q.1. Did ^{you} not at L.G.Glass's house in the presence of W.E.Glass and some time last fall of summer, tell Mr.Glass that you knew that they had not got justice in the inspection which Johnsons had given them; that you would have inspected it yourself, but that Miss Myrtle Johnson would not let ^{you} or words to that effect.

Ans. I have no conversation as that ever occurred, nor at any other place did I have such a conversation with Mr.Glass.

Q. 2. You say that the Glasses never made any complaint to you about the measurement and inspection of their lumber until after this suit was brought; that on July, 26th, 1903, L.G.Glass told ^{you} he was then hauling his lumber to Duffield, and intended to move more: State if on this occasion, he did not complain about the measurements and inspection?

Ans. He did not.

Q.3. When and where was the first complaint you ever heard either of the Glasses make concerning the inspection of their lumber?

Ans. The first one I ever heard either of them complain was L.G.Glas at his house on Wallens creek, and some time after this suit was brought.

And further this deponent saith not, with leave to recall this witness for further cross examination.

J. M. Davidson

The foregoing depositions of A. Johnson, C. C. Douglas, Sam Skeneau, Vint Woodyard, & J. M. Davidson were taken by Consent & the witnesses were sworn by E. W. Pennington by like Consent. Feb 4th 1904.

James W. Os. for Plffs.
for Defts.

A. V. L. Johnson,
Defendant
L. G. Glass & J. P. Glass.

Filed Feb 8th 1904.

H. C. T. Ewing Clerk

A. Johnson, 1 to 9
C. C. Douglas, 9 to 12
Ex. of Court, 12 to 19
J. M. Davidson, 19 to 23

they had not got justice in the inspection which Johnson had given
and some time last fall of summer, tell W. Glass that you now that
you did not at L. G. Glass's house in the presence of W. S. Glass
Gross - examination.

The deposition of L. G. Glass taken before me, Myrtle Johnson, a Notary Public of Lee County Va., at the store house of the Pennington Lumber Co., in the town of Pennington Gap, Va. by agreement on the 12th day of February 1904, to be read as evidence in behalf of the defendants in a certain suit in Chancery now pending in the Circuit Court of Lee Co. Va., wherein A. and N. L. Johnson are the Plaintiffs and L. G. & J. P. Glass are the defendants.

Present E. W. Pennington, attorney for the defendants and J. C. Noel, attorney for the Plaintiffs.

Q. #1 Are you the Mr. L. G. Glass who heretofore gave depositions in this case?

A. #1 Yes.

Q. #2 Are you acquainted with and know Miss Myrtle Johnson?

A. #2 Yes sir.

Q. #3 Miss Myrtle Johnson gave her deposition in behalf of the Plaintiffs in this case heretofore, and in answer to question #7 to her she stated that she met you near Jasper Witt's just across the river one morning, that she asked you why you were hauling the lumber to ~~Quiff~~ and you replied it was because you could get more for it. Please state if you had this conversation with Miss Myrtle Johnson and if you say you did not state as near as you can, what did pass between you and she on that occasion, if anything.

A. #3 We did not have no conversation to that effect. Me and Mr. Davidson was together and we was coming over here and Mr. Davidson called to her and told her that I had started to the Gap to fix up that matter about that lumber and she told that she didn't have no fixin up to do that she wanted the lumber. I told her that we hadn't got justice in the lumber and she said we did and I told her we didn't. I ~~xxxx~~ said that I think I know better than she did for I was on the lumber stack when it was taken up and she wasn't. That is about all that was said

to my recollection. I come on here to the Gap with Mr. Davidson.

Q. #4 State whether or not, on the occasion just spoken of by you, whether Miss Johnson told you that the lumber belonged to her Father and that you said that they had no contract for it; and that she told you that they had and you told her that they had had one but it was lost, or anything of that kind?

A. #4. I have no recollection of no such talk and knewed the original contract was recorded.

Q. #5 Miss Johnson, in her deposition, and in answer to question #4 stated that on the twenty first of July you came and asked for \$500.00 advancement on some lumber and that she gave you a note for \$510.00. Please state whether or not you got the \$510.00 note and if you say you did, state whether you got it as an advancement, and if not as an advancement on what did you get it?

A. #5 We got the note for \$510.00. Wasn't no advancement, it was for lumber that had ~~done~~ been received. I think it was on the Elkanah Young yard or contract.

Q. #6 Miss Johnson in her deposition, also stated that you and she looked over the account between you and their selves and that you had a note book and that you and she compared accounts and that you said to her that every thing was entirely satisfactory State whether anything of that kind happened between you and Miss Johnson. State as near as you can what did happen about that time.

A. #6 I never had no note book because I never keep no accounts. I have no recollection of looking over the account any further than to see if the last lumber was credited that me and old man Davidson tallied, \$352 and some odd cents I think it was.

Q. #7 Why was it you did not deliver all of the lumber included in your contract with you and Mr. Johnson to Mr. Johnson, was it on account of the advanced prices of lumber or for some other cause, and if you say from some other cause, state why.

A. #7 No sir it was not on account of advanced prices that we did not deliver it. We intended to deliver every board that it called for that is, all we had least ways. Because it was misgraded and mismeasured and failed to give us credit for some that we quit.

Q. #8 A. Johnson, in his second deposition in answer to question #27 in his examination in chief stated there was at least fifty to one hundred thousand feet of that part which was delivered last summer, had been sawed out of logs on which the sap part was rotted or doty, so much so as to reduce the grade of the boards on that account. State whether or not any of the lumber delivered to the Plaintiffs by you last summer, or at any other times, had been sawed out of logs on which the sap part had rotted and decayed?

A. #8 No sir there was not.

Q. #9 State, if you remember, out of what kind of logs the lumber was sawed.

A. #9 I could tell each yard pretty well how it was. The Stout yard, the timber was cut in the spring, that is cut down in the woods in February and March and sawed in April and May following. The Flannary stuff was cut after the Stout stuff was and was sawed the last of May following. The Hinkle stuff was cut in the woods in the fall and sawed in February following. C. V. Young stuff was cut, the Mountain yard he didn't get the Mountain stuff though. The Ridge yard of the C. V. Young stuff was cut in the woods in the winter and ~~spring~~ spring and sawed then in the summer. Could not exactly state because we were there considerable time at that yard, that is two or three months probably. Moved the mill there in the latter part of the summer. The Elkanah yard stuff was cut down in the woods just a very short time before it was sawed into lumber and I cannot tell just how long.

Q. #10 Had any of the logs been cut so long before being sawed that

the sap on them would rot?

A. #10 No sir.

Q. #11 After the logs were sawed into lumber state what was first ~~at~~ done with it.

A. #11 Well each days work was moved away from the mill and was put~~xx~~ on stick the way we keep it.

Q. #12 State whether or not any of the logs were sawed into lumber and the lumber allowed to lay without being stuck at once.

A. #12 No sir it was not.

Q. #13 In what sized ricks was the lumber generally stuck after it was sawed?

A. #13 Well I expect it would average square, if it was 12' long we made the ricks 12' square. Whatever the length of the lumber was the ricks was generally made that square. We left a good wide space in the middle of the rick that we called a flue.

Q. #14 What did you stick lumber with after it was sawed?

A. #14 With two and four inch yellow strips.

Q. #15 In your presence while Mr. Johnson was grading any of your lumber state whether or not he complained or called your attention to any of it that was doted in any way.

A. #15 The first evening I beleive it was when we began taking it up some time last summer there was ten or twelve thousand feet of it that had a little bit of white mould on it and I did not consider it rotten at all.

Q. #16 Did you mean to say that each and every board of the ten or fifteen thousand feet spoken of by you had white mould on it or a portion thereof? and if so what proportion?

A. #16 Well there was only a portion of it that was that-a-way. Well sir, I would guess it at about a tenth part and there was not very much sap boards in it and it was sap boards that was mouldy.

Q. #17. While this mouldy lumber was being inspected by Mr. Johnson

state whether he told you or that you knew he was reducing the grade of it on that account.

A_ #17 He claimed that he was reducing the grade on account of it being mouldy and I told him that mould that would dress off I did not consider a defect.

Q. #18 Did you see all taken up and inspected that was mouldy as stated by you?

A_ #18 Yes I was by when it was taken up. Not that I know of there wasn't any left.

Q_ #19 State whether Mr. Johnson ever told you afterward that there was some other that was taken up in your presence that was mouldy?

A. #19 No he never.

Q_ #20 If you remember, from what yard did this mouldy lumber come?

A_ #20 I think it come from the C. V. Young yard.

Q_ #21 Were you present all the time while Sam Stewart was inspecting your lumber or did he inspect some of ~~your~~ lumber out side of your presence?

A_ #21 I was present I think, when he inspected it. I do not think he inspected any only when I was there.

Q_ #22 While Sam Stewart was inspecting your lumber state whether or not he ever called your attention to any of it being damaged on account of being disfigured or colored.

A_ #22 No sir he did not. Maybe there would be a rotten place in a board when he would say something about it. But it would be very seldom we come across a board.

Q_ #23 State whether or not that it was discussed between you and Mr. Stewart and between you and any other person connected in handling your lumber that it looked as though it was damaged by being sawed out of old logs, or that the lumber had been piled up in bulk and not properly stuck so as to dry out thoroughly.

A_ #23 No sir it was not.

Q_ #24 Sam Stewart, in answer to question # 17 in his examination in

chief stated that after all the lumber was inspected that you told him that you was satisfied with the inspection. State whether or not you did do so.

A. #24 No sir I did not nor nothing to imitate it.

Obj. The foregoing question and answer is objected too because it does not correctly quote the witness Stewart. J. C. NOEL.

Q. #25 Mr. J. M. Davidson in his deposition in answer to question #6 says that neither you nor J. P. Glass ever made any complaint to him or in his presence as to the measurements and inspection of the lumber until after the suit between these parties was instituted. That you always spoke as being satisfied with Mr. Johnson's measurement and inspection until after this suit was brought. Please state whether you ever had any conversation with Mr. Davidson in which you expressed yourself as to whether you was satisfied or not with the inspection which Johnson had given you for yharlumber previous to the institution of this suit. If so state when, & where if you remember.

A. #22 We had a little talk once or twice and complained to him that we had not had justice. He was over there to my barn gate at one time, me and W. E. Glass was together. I told him that we had not had justice in our lumber and he stated he knowed we hadn't. I told him that we wanted him to measure dur lumber and he told that they wouldn't let him. I asked him why and he said they knowed that he would give us what was in the lumber, and he said that he knew that Stewart wouldn't. And at another time I was at the head of the creek running the saw mill and he sent one of my men up there after me to come to Stickleyville. I come down there and he said to me again that we had not had justice in the lumber and I told him that I told Miss Myrtle that I wanted him to measure our lumber and she said she couldn't get him handy that he was in Harlan somewhere and he said they did not want him is the reason they did not get him. He said if he had measured the lumber and went on

the rick with us he did not think we would have had any trouble. Then he said if we did not hold up ~~for~~ our rights no one else would for us and a whole lot more. This was in July and on the very day I met Miss Myrtle Johnson as above stated. The conversations above mentioned by me was before this. He said he wasn't struck on Johnson no way, it was the money he was after.

Obj. The foregoing answer is objected too in so far as it undertakes to detail any conversations that took place between the witness and J. M. Davidson as to what Davidson should have said concerning the fairness or unfairness of the grade received by said witness from Stewart, or for any purpose other than for the sole purpose of contradicting any statement ^{that} ~~xx~~ said J. M. Davidson should have made in his examination in ~~chief~~, because hearsay and immaterial.

J.C.NOEL

Q.#26 State whether or not that on the 26th day of July 1903 at Wallens Creek or any other place, you met with J. M. Davidson and that you told him that you were moving your lumber to Duffield because you could get nearly twice as much for it ~~there~~ as from Mr. Johnson, or anything of that kind?

A. #26 No sir I did not have such talk with him.

Q.#27 State whether or not, at or near your house and in the presence of W. E. Glass sometime last fall or summer, if Mr. Davidson did not tell you that he knew that you had not gotten justice in the inspection of your lumber that Johnson had gotten from you, that he would have inspected it himself but that Miss Myrtle Johnson would not let him, or words to that effect.

Obj. The foregoing question and any answer thereto is objected too because immaterial so far as the plaintiffs are concerned because purely hearsay, and it is also objected too for the purpose of contradicting the witness Davidson because the answer given by Davidson upon this point was upon the cross examination of the defendant and not part of his examination in ~~chief~~. The witness Davidson being a witness of the defendant's and his

statement as such cannot be contradicted by the defendants.

J. C. NOEL.

A. #27 Yes sir he told us that.

Q. #28 The lumber which you sold to R. C. Duff state whether or not it was manufactured from the same character and kind of logs as was the lumber manufactured which the plaintiffs got.

A. #28 Well it was practically the same only it was a little but the worse lot of logs than those that Mr. Johnson got his cut of.

CROSS EXAMINATION.

Q. #29 How much per thousand did you get from R. C. Duff for the lumber you sold him from the C. V. Young and Ozro Young yards?

A. #29 Well I got \$11.00 for 4/4 cull, \$12.00 for 5/4 and up to 8/4 ~~sk~~ cull, \$24.00 for common and \$34.00 for 1&2.

Q. #30 Supposing that lumber had gone down in the market instead of having advanced and that R. C. Duff had only offered you \$16.00 per thousand feet for 1&2, \$10.00 for common and \$6.00 for culls, and that had been the market price at that time would you have let him had this lumber?

A. #30 Yes we would have let him had it at this price because we were not getting justice the way it was running. I know lumber when I see it.

Q. #31 Well if he had offered you \$12.00 only, for the 1&2 and \$8.00 for the common and \$3.00 for the culls, would you still have let him had it that being the market price?

A. #31 That being the market price we would, we could not have got any more.

Q. #32 If lumber had gone down to this price you would not have asked Johnson to have taken the rest of it. Am I to understand you to say that you would not have insisted on Johnson taking the lumber at the contract price with you?

Q. #32 I would not have insisted on it the way the grade and measurement was running which I consider dishonest.

Q. #33 At whose grade did you complain about this lumber, any body's

but Stewart's?

A. #33 Yes I complained of Johnson at different times but he did not pay a bit more attention to me than if I had been a mule.

Q. #34 You say you complained to Mr. Johnson about the grade he was giving you?

A. #34 Yes I told him right on the rick.

Q. #35 Did you tell him that if he did not give him a better grade you would sell to some one else and not let him have it?

A. #35 No I did not tell him that.

Q. #36 While you were inspecting the lumber with Mr. Johnson you stayed at his house did you not?

A. #36 I ate a meal or two but I never stayed over night in my life.

Q. #37 Were not your and Mr. Johnson's relations perfectly agreeable and pleasant all that time?

A. #37 We did not get mad and have any falling out but we disagreed on the lumber.

Q. #38 While Mr. Johnson was away sick and while Stewart was grading your lumber or a short time after he had graded the lumber on the first day of July were you not over here and did you not have a conversation with me (J. C. Noel) on Mr. Johnson's lumber yard in which you told me that your contract said that Mr. Johnson should grade this lumber and that he was the man you intended to grade it and if he did not grade it you were ready to comply with your part of the contract and ^{that you would} let some one else have it, or words to that effect?

A. #38 I think I told you I wanted him to measure it that I would sooner risk him than Stewart, but as to selling to some one else I do not remember.

Q. #39 Did I not propose to you that you and Stewart go ahead and complete the grading and that when you could not agree upon a board that you would lay that board aside and after the lumber had all been gone through to get a disinterested party to grade the boards about which you and Stewart could not agree and did

you not then go away and see Judge Pennington and did you not then come back and accept that proposition?

Obj.

~~xx#38~~ The foregoing question and any answer there to is objected too because any overture of statements and disputes are incompetent evidence. E. W. PENNINGTON.

A.#39 Yes I went and saw Mr. Pennington but before that you said if we didn't take up that lumber that the law would have to settle it and that is why I agreed that me and Stewart would take it up was to keep out of a law suit for I never had one in my life.

Q.#40 You said that you did not tell Miss Myrtle Johnson as you remember it, that the reason why you was taking the lumber to Duffield was that you were getting a better price for it. You did have a conversation with Miss Johnson over near Mr. Witt's store I believe you said.

A.#40 I did not say but a few words to her. Mr. Davidson did most of the talking.

Q.#41 Was Mr. Davidson present during all the conversation that occurred between you and Miss Johnson?

A.#41 He was over there. Him and her was off kinder talking secretly There was a few words spoken by me. Mr. Davidson got down off of his horse.

Q.#42 You said, I believe that none of the lumber was sawed from logs with doty or injured sap, did you not?

A.#42 Yes sir.

Q.#43 Was not a great deal of this lumber cut from the stumps in the months of March and April when the sap was up?

A.#43 There might have been some of the Stout stuff cut in March, but the other was cut, well none of it was cut in April that I know of.

Q.#44 Was not a great deal of it cut in May?

A.#44 No none of it was cut in May.

Q.#45 Is it not a fact that timber that is cut down when the sap is

up will injure in a month or two?

A.#45 I do not know, I have never tried any of it that-a-way. I have heard mill men say that they would just as soon cut it in the summer as any other time. I never tried any of it myself in that way.

Q.#46 Then you do not know what the effect of cutting timber in the months of March, April and May have on the sap?

A.#46 Cutting in in March it does not damage at all, I have cut it in March myself.

Q.#47 After you had contracted the Ozro Young timber and part of the C. V. Young timber to Cecil Duff and had graded part of it did you not try to sell the lumber to Mr. Offert, a representative of the Tug River Lumber Co.?

Obj. The foregoing question and any answer thereto is objected too because irrelevant and immaterial. E. W. PENNINGTON.

A.#47 In this way, Cecil Duff was putting the 5" clear boards into culls and we disagreed on it and Offert was there. I told Duff if he could not take it according to rule I did not want it inspected.

Q.#48 Did not Mr. Offert tell you that he could not take the lumber on the grade that Duff was then giving you, or words to that effect?

A.#48 No sir I do not think he did.

Q.#49 You say that you did not sell this lumber to Duff because you were getting an advance price or a better price than Johnson was paying you, it was simply because you were not getting the grade from Johnson that you thought you ought to have had. Did you ever offer to pay to Mr. Johnson the surplus that you had received over the advanced price that Duff was paying you for this lumber?

A.#49 No sir, I did not consider I owed it to him.

Q.#50 If you had contracted it to him and then sold it to another man

L. G. Glass et al

advs { Depts.

W. L. Johnson

Q. Now I am not connected to him and when you call it to another man

the lumber

received over the advanced price that Dull was paying you for
you over after I pay to Mr. Johnson the scribble that you had
before from Johnson that I thought you ought to have had. Did
you pay him? It was simply because you were not getting the
whole thing as advance price at a better price than Johnson
was. Now I am not connected to him and when you call it to another man

the lumber

Q. Now I am not connected to him and when you call it to another man
the lumber

Dull is not connected to him and when you call it to another man
the lumber

Q. Now I am not connected to him and when you call it to another man
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Q. Now I am not connected to him and when you call it to another man
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Q. Now I am not connected to him and when you call it to another man
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Q. Now I am not connected to him and when you call it to another man
the lumber

Q. Now I am not connected to him and when you call it to another man
the lumber

at an advanced price why did you not consider that you owed him the difference between the price contracted and the price you received?

A. #50 I did not consider that he had filled his contract.

Q. #51 On inspection, is it not a fact that in grading the 5" clear boards that Mr. Johnson would put them in the common?

A. #51 Some of them he would and some he wouldn't. Stewart would put the majority of them in the culls.

Q. #52 About what part of the lumber you let Mr. Johnson have did Stewart grade?

A. #52 I could not exactly tell but I think it was about 119 000', (one hundred and nineteen thousand feet) or something near that.

Q. #53 All the rest was graded by Mr. Johnson was it not?

A. #53 I reckon it was. Some of it was graded when I was not here and I do not know who graded it.

Q. #54 If Mr. Johnson was grading your lumber so badly why did you go off and leave it in his hands to do entirely?

A. #54 Because he paid no attention to what I said when I was present. I didn't consider it would be much better with me there or some where else, because I wasn't in it it didn't seem like.

Further this deponent sayeth not.

L. G. Glass et al

adrs { Depositions

A. & R. L. Johnson

Filed Feb. 15th,
1904. H. C. T. Croning
Clerk

L. G. Glass.

The deposition of r/ r/ early and others taken before me, L. T Hyatt, Special Commosioner in the chancery cause entitled Pennington Lumber Co., vs, L. G. Glass et al., at the law office ■ of J. C. Noel, in the town of Pennington Gap? Virginia, On the 12 day of September, 1904, pursuant to agreement of the parties by their attorneys, to be read as evidence on behalf of the plaintiffs in said cause.

Present: J. C. Noel, of counsel for the plaintiffs.

E.W.Pennington, of counsel for the defendants.

The witness, R.R.Early, being first duly sworn, deposes as follows:

Q.1.- State your age, residence and occupation?

A.-I am 42 years of age, reside on the head of Wallens creek, in Lee county, Virginia, and my occupation is farming and saw-mill and lumber business.

Q.2-How long have you been in the lumber and saw-mill business ,

A.-12 years.

Q.3.- Were you acquainted with the C. V.Young timber that was sold to J.P. and L.G.Glass? the lumber from which was contracted by them to A. and N.L.Johnson?

A.-Yes sir, I was acquainted with it.

Q.4.-State what connection, if any, you had with that timber deal?

A.-My brother and myself bought the timber from C. V. Young. We bought it in the summer of 1901, and in the winter of 1901 Or in January of 1902, we sold the timber to L.G.Glass, or ^{at} least he was the one with whom we made the trade.

Q.5.-State, if you know, when this C.V.Young timber that you speak of was felled and cut into saw logs?

A.- We contracted the cutting and sawing of the timber to Henry Chafin. He commenced cutting it in the fall of 1901 about August or S^eptember, and completed it in the early part of the year 1902.

Q.6.-When was this timber sawed into lumber, if you know?

A.-The sawing was begun in June 1902 and finally completed in the summer of 1903.

Q.7.) Which yard was first sawed into lumber?

A.-The yard known as the mountain yard.

Q.8.-Tell as nearly as you can when the mountain was sawed into lumber, and then when the ridge yard was sawed?

A.-They commenced the sawing of the mountain yard in June 1902 and finished sometime between that and October of the same year/ In October or November I met L.G.Glass and C.V.Young at the ridge yard to measure up what logs they had there, so that they could measure them up and commence saving them into lumber

Q.9.-Did you measure any of the ridge logs?

A.-Yes sir. I measured somewhere between 50,000 and 75,000 feet.

Q.10.- What was the condition of those logs when you measured them on the ridge?

A.- The bark was loose on them.

Q.11.- State, if you know, how it effect the lumber manufactured from a log, for the log to lie, after it has been felled long enough for the bark to get loose on the log? Poplar logs in particular?

A.-It lowers the grade by defect of the sap on the boards.

Q.12.-State whether or not the ridge timber was a heavy or a light ~~timber~~ timber?

Obj.-The foregoing question and any answer is objected to because leading. The witness should have been asked what kind of timber it was without indicating the answer desired.

E.W.Pennington.

A.-Well, my experience with the ridge timber after we worked the timber of Mr.Caner Young adjoining this, is that the ridge timber is of rather a heavy sapped nature.

Q.13.- Which, from your observation, has the heavier sap, the mountain or the ridge timber on the Wallen's creek country?

A.-The ridge timber has the heavier sap.

Q.14.- Which, on an average, was the larger timber of the C.V. Young timber, that on the ridge or that on the mountain?

A.-Well, to take the whole number of logs cut on the mountain side with the whole number of logs cut on the ridge side, the mountain

logs would have averaged more to the log.

Q.15.- Did you see the lumber, or any part of it, that was manufactured from this timber on the ridge?

A.-I saw a part of it.

Q.16.-⁺⁺In what condition was it?

A.- The lumber was damaged to some extent. I was at stickleyville and they were hauling lumber from the ridge yard down there-short hauling- some of the lumber on the wagons and putting some off on the ground, and i was noticing the lumber as we had had somethigh to do with it. I noticed that the lumber was damaged by what would be termed sap-rot in inspection of the lumber.

Q.17.- What effect has sap rot on lumber in grading?

A.-It depends upon the extent or seriousness of the rot and the width of the board. A board 16 inches wide will admit of five inches of sap provided it is bright and there is no other defect in the board, and if the board is 12 inches wide it will admit of two inches of bright sap, but in either case if the sap is effected the grade of the board will be lowered from good (NO.1 or 2.) to a common. If the board is a common by reason of knots or sap, and the sap is discolored or effected by rot, the board will be reduced to a shipping cull. In the same sence a shipping cull would be reduced to a mill cull, that is if the sap is rotten/ But if the sap is merely discolored the board will not be reduced below a shipping cull.

Q.18.- Judging from the condition of the timber on the ridge yard when it was manufactured into lumber, and from the lumber you saw after it had been manufactured, what was the extent of the damage to said lumber by reason of the discolored and rotted sap?

A.-I expressed the opinion a few days after I saw that lumber at Stickleyville, that by reason of their delay in getting out the stuff that they would loose not less than from 15% to 20% on the timber, and I am still of that opinion.

Cross- examination.

Q.1.- Which do you think would be more likely to be correct as to the time when you and your brother P.T.Early, bought the C.V. Young timber? you or your said brother?

A.- I don't know + + I re. why we should differ.

A.-I don't know any reason why we should differ. The only this I go by is that I made the contract myself with MR.Young for the timber.

Q.2.- Did not your brother make the said contract with said C.V. Young for said timber, and not y u?

A.-I wrote the contract.

Q.3.-Do you mean to say that your brother did not make the contract with C.V.Young for th timber?

A.-If talking about buying the timber was making the contract he made it, but if writing the contract was making it I made it. HE talked the trade up, and I went and closed it up and drawed the contract.

Q.4.-Was not the contract for the timber between you and your brother ~~XXXXXXXX~~ on the one side and C.V.Young on the other concluded about christmas 1901?

A.-No sir.

Q.5.-If your brother, P.T.Early, stated that the contract between you and Young was made about Christmas, 1901, then he was mistaken as to the time, was he not?

A.-Yes sir.

Q.6.))Have you a better memory of past events than your brother, P.T.Early?

A.-I can't answer that .

Q.7.-In how many yards was the C.V.Young timber yarded and sawed?

A.-Three.

Q.8.-At which of the yards was it that you measured the fifty or 75 thousand feet of logs?

A.) At the first of the ridge yards that was saw d. The mountain yard was sawed first. The yard I measured was situated north of C.V.Young's house up in an old sage field.

Q.9.- You say some of this timber that you measured, the bark was loose of it. Tell about what per cent the bark was loose on?

A.-It was all about the same, I did not see it all barked, I

saw only a small per cent of it barked. If you have a hundred logs cut at the same time, it is to be supposed that the bark will be about the same on all of them.

Obj.-So much of the foregoing answer that refers to the witness supposition is excepted to because immaterial and only an opinion.

n

E.W.Pennington.

Q.10.-Of your own knowledge, do you know where the lumber came from that you saw at Stickleyville?

A.-No, I did not see them load it on the wagons.

Q.11.- Then from all you may know personally, it may have come from some other place than from the C.V.Young timber?

A.-I might say that I know that it did not come from any other than the C.V.Young timber, because they did not have any other timber that could have come from the direction they were hauling.

Q.-From your own knowledge, ^{that} you state that you ^{know} it did come from the C.V.Young timber, do you?

A/) Yes sir, from the fact that they had no lumber that they could have hauled to that place that could have come from that direction.

Q/13.- Did you see the wagons drive up at Stickleyville with the lumber?

A/) Yes sir.

Q.14.- Who were driving the wagons, and how many?

A.- I do not remember who was driving the wagons, but I believe ^{There were at least three wagons.} that Emmet Glass was one driver.

Q/15.-State whether you went through this lumber board by board?

A.-No sir.

Q.16.- Where does Henry Chafin live?

A/17.--On Silas Young's land on Wallen's creek.

Q.17.-Who assisted Mr.Chafin, if you remember, in cutting said timber?

A.-I do not know.

Q.18.-Which of the C.V.Young yards did Mr.Chafin fell last?

A.-He felled the ridge side timber last.

Q.19.-Which of the two ridge yards was sawed into lumber last?

Q.²⁰ Did you know the Ozre Young yard?

A.- Yes sir.

Q.21.-Which was the better timber, the timber that made the Ozro Young yard, or the C.V.Timber?

A.--In my judgment it was ab ut equal.

Q.22.--Which was sawed into lumber first, the Oxre or the C.V.Young timber?

A.-The C.V.Young timber was sawed into lumber before the Ozro Young timber.

Q.23.- In what year and season of the year was it you saw the wagons at Stickleyville with the lumber spoken of by you?

A.-My recollection serves me it was April, 1903.

Q.24.-In your opinion, how long had the lumber been sawed when you saw it at Stickleyville?

A.-The lumber that I saw and believed came from the C.V.Young land was sawed between October 1902 and April 1903.

Qx25xx And further witness saith not.

R. R. Early

1 day 8 mi.
Wet claims 827

Also the deposition of M.N. Offut, who being duly sworn, deposes as follows:

Q.1.-State your age, residence and occupation?

A.-I am 34 years of age, reside at Bristol, Tenn., and am manufacturer and wholesale dealer in lumber.

Q.2.-In what business were you engaged in the year 1903?

A.-Lumber business, with Tug River Lumber CO.

Q.3.-Are you acquainted with L.G.Glass?

A.-I am.

Q.4.-State whether or not the said L.G.Glass offered to sell to you any lumber at Duffield in the year 1903~~2~~ which he had contracted to ^Asell or which he claimed he had contracted to one Cecil Duff?

A.-He asked me for some prices on lumber and said that he was~~x~~ selling it to Duff.

Q.5.-Please state what was said between you and said Glass on that occasion concerning the grade he was getting from Duff?

A.-I told Mr.Glass that we did not want to interfere with anybody's trade, and asked him what he was getting for his lumber, and he told me but I do not remember the prices which he named. Then he asked me to look over some boards that he said that he and Mr.Duff had disagreed on, and also told me the grades which these boards were laid out on, and I also looked over the tops of some of the piles, and I told him if Mr.Duff was paying the prices he said and giving him the inspection that he, Mr.Glass, said that he was getting, I advised him to go on and sell to Mr.Duff as he was getting a much easier inspection than what we could afford to give him.

Q.6.-State whether or not a lumberman, or lumber dealer, could afford to buy lumber on the inspection that L.G.Glass claimed he was getting from Cecil Duff?

A.-If the Tug River Lumber Co. were buying on that inspection, it would expect to lose money, and as I do not consider that we could ship the same grades that Mr.Duff was giving without a loss.

Q.7.- Does your Company--the Tug River LUMBER CO.--give as liberal grades, in inspecting lumber which it purchases, as other responsible lumber Companies of your knowledge give?

A.-We usually give a fair inspection, at the same time expect our grades to stand up.

~~CROSS-EXAMINATION~~XXX

of M.N. Offet

The reading of the foregoing deposition is excepted to because of the circumstances under which it was taken as follows: The deposition of R.R. Early was taken by agreement in the evening of Sept., 12th, 1904, and after his deposition was closed, it was asked me for the defendants to take the deposition of Offet after night and after the eastern evening train came. I consented to do so. But instead of letting me know whether the witness came, and they would want to take said witnesses deposition,

This was done with exception of Judge Pennington. When we got to my office we did not find Judge Pennington. We then for 15 or 20 minutes tried to find him in the phone. But could not get him. We then examined witnesses in chief and gave Judge Pennington notice next morning and invited him to cross examine witnesses, which he refused to do.

gave Judge Pennington notice next morning and invited him to cross examine witnesses, which he refused to do.
J.B. Hall for plaintiffs

-8-
somewhere & without my presence or the presence of some time in the night they take his deposition and soon this morning send me word if I want to cross examine the witness they will give me that opportunity. This deposition is further excepted to because immaterial, and because it seeks to contradict the plaintiffs' own witness R.C. Duff. This Sept. 13th 1904

The above exception is without foundation or warrant, as it was distinctly agreed by Judge E.W. Pennington, Commissioner of the Dept. and myself, that the deposition of that witness should be taken at my office in Pennington Bldg. after the 7:50 P.M. train should run, as the witness would come in on that train. We were to meet at the dept. and go to my office as soon as the train should come in.

And further witnesses said not
M.A. Offutt,

either defendant or any one to represent them

W. L. Johnson

vs { DePaul

J. P. & L. G. Glass

R. A. Early & others

The depositions of Wade Ellison and others, taken before me, L. T. Hyatt, Special Commissioner in the chancery cause pending in said court, entitled Pennington Lumber Co. vs. L.G.Glass et al., on the the 8th day of September, 1904, to be read as evidence on behalf of the defendants in said cause, pursuant to agreement of the parties by their attorneys.

Present: R.L.Pennington, Attorney for the Defendants.

Orr & Noel, for the plaintiff.

The witness, Wade Ellison, being first duly sworn, deposes as follows:

Q.1.--State your age, residence, and occupation?

A.--I am twenty-one years of age, reside in the town of Pennington Gap, Lee County, Virginia, and am clerk in the store of the Pennington Lumber Co.

Q.2.--How long have you been clerking for said concern, and for N.L.Johnson?

A.--About six years.

Q.3.--State whether or not the Pennington Lumber Co. is the successor in business of Mrs. N.L.Johnson?

A.--Yes sir, it is.

Q.4.--About July of the year 1903, do you remember Lawson G. Glass coming into the store of N.L.Johnson, or the Pennington Lumber Co. at Pennington Gap, and handing you a board, or boards, containing a tally sheet in reference to the measurement of some lumber; and if so, please state what you did with the board, or boards?

Obj.--The foregoing question, and any answer thereto, is accepted to because directly leading. It would have been just as easy to have asked the question for the witness to state whether any such tally board had been left in his possession, and if so, when, without fixing for the witness any time.

J. C. Noel, for plff.

A.--As to the date I can't state at all, but he did at one time give me a tally board, and asked me to take care of it till he called for it. I was at the safe at the time, and told him I would place

the board in the safe, and I did so. Some time afterwards, I can't state how long, Mr. Glass called for the board, and I delivered it to him.

Q.5.--Do you know what Mr. Glass did with that board after you delivered it to him?

A.--I do not.

Q.6.--Do you know the fact that the Pennington Lumber Co. was receiving lumber from L. G. and W. E. Glass, or either of them at any time?

A.--I did not have anything to do with that department at all. I can't say that I do know they were receiving any lumber from said Glass' or either of them. I did not receive any and did not see any received. I only know about that from hearsay.

Q.7.--Who did you hear say anything about it?

A.--I don't know as I remember.

Q.8.--Please state whether or not you ever heard either N'L. Johnson or A. Johnson say anything about it?

A.--They never did talk to me anything about it.

Q.9.--Please state whether or not you ever heard N. L. Johnson or A. Johnson say anything about receiving or purchasing lumber from L.G. and W. E. Glass, or either one of them?

A.--Yes I have heard them talking about it.

Q.10.--State whether or not it was along during the time you heard the Johnsons speak of receiving lumber from the Glass' that L. G. Glass gave you this tally board, and asked you to take care of it as above stated by you?

A.--I don't know sir, whether it was or not.

Q.11--State as nearly as you can when it was that you heard the Johnsons speak of receiving lumber from the Glass'?

A.--Well I have heard them mention it at different times, along last summer, I think it was. I mean the summer of 1903.

Q.12.--Did Mr. Glass at any other time than the one time you have spoken of, give you a tally board to take care of?

A.--The one time is all that I remember.

Cross-examination.

3.

Q.1.--State whether or not you know that the tally board that you have spoken of in your examination in chief as having been left with you had any tally sheet or sheets on it?

A.--I don't know whether it did or not.

Q.2.--State whether or not you know whose lumber was tallied on said board?

A.--I don't know.

Q.3.--

And further witness saith not.

Wade H. Ellison

at N. S. Johnson

Deposition
of
no { H. de H. Ellison

L. G. & J. P. Glass

for this evening meeting

through this

felt good yiled and said work now for to tonight state--L.O
not need driven as said it notwithstanding that it to people even now
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for to had it tonight work from 1--A
believe now tonight work now for to tonight state--S.O
believe this

By consent of the parties in this cause the depositions on yesterday is resumed today.

Present E. W. Pennington for the defendants and J. C. Noel for the plaintiffs.

W. E. Glass another witness after being duly sworn deposes as follows.

Q.#1 Are you the same W. E. Glass who gave depositions here-to-fore in this case?

A.#1 Yes.

Q.#2 Did you know any of the logs of the C. V. Young yard, Stout yard, Hinkle & Banner yard or Ozro Young yard before they were sawed into lumber? If so state the character of the logs if you know.

A.#2 I did not know anything about the Hinkle & Banner logs and I saw part of the Stout logs on the yard. All of the ridge timber, the Ridge yard and Dry Creek yard, I helped log and saw it. I saw part of the Mountain yard logs, and helped to log and saw part of the Ozro Young yard, I helped to cut part of the trees down. The Smith Stout logs were a nice bunch of logs green timber, they were all good, nice timber. I never helped to cut the C. V. Young timber but the Ozro Young I help cut myself. There wasn't any of the logs damaged a particle as that goes. None of the sap was rotten or decayed, I might hit a log once in a while that might be shuck a little worse or something like that, but not enough to say anything at all.

Q.#3 Had the logs before they were sawed into lumber been cut in the woods so long that the sap would rot before they were manufactured into lumber?

A.#3 No sir there wasn't any of them that had been cut that long.

Q.#4 Had any of them been cut so long that the sap part had doted near the end?

A.#4 Once in a while you would find one doted at the end an inch or two, there is from three to five inches allowed on the log by measure when they were cut in the woods that is to make sure

length. None of it had been cut so long that it would lower the grade on account of the dote.

Q.#5 After the logs were sawed into lumber what was done with the lumber after it came from the saw?

A.#5 It was put on stick. We might run the mill a day and stick up in the morning. We generally did the sticking while the mill was heating up.

Q.#6 In what width ricks, if you remember, was the lumber stuck after it was sawed?

A.#6 It was generally in square ricks, fourteen foot stuff was ~~in~~ stuck in fourteen foot square ricks with flue in the middle, generally from ~~one~~ one half to two foot flue. Not out of this stuff, we run a stacker all the time, that is the C.V. Young ridge yard. Mr. James Million did the stacking.

Q.#7 With what did you stick the lumber?

A.#7 On two, three and four inch strips sawed out of the heart of the logs. We never put any sap in them at all.

Q.#8 State whether you know J. M. Davidson or not.

A.#8 Yes I am acquainted with him to some extent.

Q.#9 State whether or not, near the house of L. G. Glass and in your presence some time last fall or summer if Mr. Davidson, in a conversation with L. G. Glass did not say that he knew that you all had not gotten justice in the inspection of the lumber that Johnson had gotten, that he would have inspected it himself but that Miss Myrtle Johnson would not let him, or words to that effect?

Obj. The foregoing question and any answer thereto is objected too because anything that J. M. Davidson may have said, unless it was shown to have been authorized by the plaintiffs in this case can in no way prejudice the right of the plaintiffs in this suit, and further because the question propounded to said Davidson by the defendants had no connection with his examination in chief, and therefore said Davidson, as far as the ques-

tion was concerned was a witness of the defendants and they cannot contradict his testimony. J. C. NOEL.

A.#9 Yes he had that kind of talk right over there at the gate of L. G. Glass' barn or the one he used to own. I was there at the barn when he rode up late one evening. We got into conversation and he said that the Pennington Lumber Co. or Mr. Johnson one I don't remember which, had sent him over there to put a notice on the lumber to stop us from hauling it away to Duffield and he said he was not going to do it; for he said he was friend to the Glass boys as much or more than he was to Johnson. As far as Johnson was concerned his money was all that he was after that he was paying him a good price for his work. In the conversation one of us told him that we wanted him to do the inspecting, since he seemed to us a fair talking man. We told him that they said they could not get him. He said it would have been a very easy matter to get him as he was only up in the mountains a little way working a road. He said the reason they did not want him that they knowed that he would give us what was in it and Stewart wouldn't and that is the reason they had Stewart. He talked a whole lot more but I do not remember all the conversation.

Q.#10 State as near as you can when this conversation was had with Mr. Davidson.

A.#10 The best I remember about it was sometime in August. This was the day before Mr. Davidson and L. G. Glass come together to Pennington Gap.

Q.#11 State what you may know of the character of the logs out of which the Lockart, Horton, and Edwards yards were sawed.

A.#11 I saw them logging and sawing it but I was not at the mill at any time. Was passing along the road where they were at work.

CROSS-EXAMINATION.

Q.#12 Do you know of your own knowledge that all ~~xx~~ the logs of the Edwards, Lockart and Horton yards were of green ~~xxxx~~ timber?

4
A.#12 No I don't.

Q.#13 Do you know of your own knowledge whether or not all of the Flanary, Stout, Elkanah Young, and C. V. Young yards were of green timber?

A.#13 The Hinkle & Banner I do not know a thing in the world about that I was not about it. Never saw the Smith Stout yard only passing along the road. If there was any dead timber it was cut from the stump and hauled in at the same time.

Q.#14 Do you know at what season of the year all of this timber was cut from the stump and sawed into logs?

A.#14 No sir I do not know that.

Q.#15 Is it not a fact that green timber when cut in the spring while the sap is up will damage in a few weeks if allowed to lie before it is sawed?

A.#16 It would take it right smart bit.

Q.#16 Did not L. G. Glass cut some timber on his own land and put in on this contract?

A.#16 I do not know that he did. I was not there more than half the time.

Q.#17 Do you know of your own knowledge that none of the lumber that was hauled and delivered to the plaintiffs at their mill or in Pennington Gap by L. G. Glass & J.P.Glass was doted?

A.#17 No sir I do not know that there wasn't any of it. Part of it I hauled and it had a little of this white mould on it that would have lowered it to common. Our contract was for 1&2, common and cull.

Q.#18 Is it not a fact that while this lumber was being graded that you were on the lumber pile one day while Mr. Johnson was grading and taking up the lumber and that several boards were graded and their grade lowered on account of this dote or mould or damage?

A.#18 No sir I do not know as I was ever on the rick while Mr. John-

son inspected it. While he was inspecting for us neither of us were here. 39 000' I think the bill shows.

J. P. Glass another witness of lawful age after being duly sworn deposes as follows.

Q.#1 Are you the same J. P. Glass who here-to-fore gave depositions in this case?

A.#1 Yes sir.

Q.#2 Mr. A. Johnson in his examination in chief in his second deposition in answer to question #27 stated there was at least fifty to one hundred thousand feet of that part of the lumber which was delivered last summer that had been sawed out of logs on which the sap part was doty, so much so as to reduce the grade of the board on that account. State whether or not any of the lumber delivered to the plaintiffs last summer by you or any of you had been sawed out of logs on which the sap part had been decayed, rotted or dotted.

A.#2 No sir I do not think there was. The stuff was all cut out of green timber.

(It is hereby agreed by both parties that the statement of A. Johnson as to the doty lumber was not to apply to any of the lumber delivered by J. P. Glass, that is the Horton, Lockart or Edwards yards)

Q.#3 Were you acquainted with the character of the logs out of which the Smith Stout, C. V. Young, Ozro Young, and Hinkle and Banner lumber was manufactured? If so state what the character of the logs saw.

A.#3 Well I seed the principal part of the Hinkle logs before they was sawed into lumber and I reckon I seed all of the Smith Stout stuff and helped to saw part of it. It was all cut out of nice green timber and had not been cut from the stump but a short time before being sawed at the mill. I seed part of the

logs on the other yards but I didn't help to saw it. There was no doty timber that I sawed. Perhaps there would be a doty butt come in but as to the doty saps I did not find any of them.

Q.#4 Did you see all or either of the yards of logs made from the C. V. Young timber? If so state what the character of the logs were.

A.#4 I only seed the Mountain yard. I was not on any of the other yards. The Mountain yard had been cut from the stump a month before they were yarded. They looked a little bit old at the ends.

Q.#5 Did you see the lumber from the Stout yard, Hinkle & Banner, sometimes known and called the Hinkle & Flanary yard, and the C. V. Young lumber after it was sawed and stuck, if so tell how it was stuck and when, if you know, with reference to the sawing of the same.

A.#5 Well I seed the Hinkle & Banner yard which was stuck right ~~at~~ along after the mill and stuck in the length in nice ricks, boards three or four inches a part, in squares, with flues up through the middle twelve, eighteen, or twenty inches. The Stout yard I seed it and helped saw it and put up a good deal of it myself.

Q.#6 With what kind of stuff was the lumber stuck if you know?

A.#6 It was from two to four inch strips we would cut out of the ~~h~~ heart of the log as it made good striping. We put one at one end and one at the other and one in the middle.

Q.#7 State whether or not the manner in which that lumber was stuck is the accepted manner of sticking lumber by lumbermen in this country in order to prevent moulding etc?

A.#7 Yes sir it was.

CROSS EXAMINATION.

Q.#8 Do you know of your own personal knowledge when all of the Stout, Flanary, and C. V. Young timber was cut from the stump and sawed into logs?

- A.#8 I do not know just the date but it was right along in connection. There was some little cut in the spring.
- Q.#9 Was not some of the C. V. Young timber cut in the spring and not cut into lumber until the following fall or winter?
- A.#9 I do not know that.
- Q.#10 You do not undertake to say that none of the lumber that was delivered from the Stout, C. V. Young, Elkanah Young and Hinkle & banner yards was dety or damaged, do you?
- A.#10 I know what I seed of it was not damaged.
- Q.#11 Did you go through it and see all of it?
- A.#11 No I never went through it and seed all of it.
- Q.#12 Was there not a great deal of it that you did not see only in the rick?
- A.#12 I never saw the C.V.Young, but the Stout stuff I know that it was alright, that is the greater portion of it. I saw some of the logs.
- Q.#13 Do you undertake to say that none of the C. V. Young lumber was damaged?
- A.#13 I do not know anything about it. I never seed a board or log of it.

M. L. Dotson, another witness of lawful age being duly sworn deposes as follows,

- Q.#1 What is your residence and occupation.
- A.#1 Pennington Gap, Va. Lumber business.
- Q.#2 How long have you been in the lumber business?
- A.#2 I have been in it from twenty to twenty five years.
- Q.#3 In what way have you been in the lumber business?
- A.#3 I manufactured it, sold it, bought it, shipped it, graded it, and inspected it.
- Q.#4 Supposing lumber sawed from the mill on one day and stacked the next with from two to four inch strips, sawed from the heart

of the log, spaces between the boards and the ricks made square depending upon the length of the lumber and the boards placed from one to two inches apart and where packs are twelve feet square or more and have a flue in the middle from one to two feet, would such stacking prevent, in your opinion, the lumber from doting?

A.#4 Well I think it would unless it would stand there an unreasonable length of time.

Q.#5 As to the grading and inspecting of lumber, what effect, if any does the white mould have upon poplar lumber?

A.#5 Well, it depends upon how bad it is. If it is only the white mould and not bad enough to affect the lumber it does not make so much difference, but if it is enough to make the lumber doty it would affect it. You might take aboard that is a #1 or #2 board and let that mould get on the sap part and it would knock it down to the common grade. A common board as I understand the grade will take one third discolored sound sap.

Q.#7 In your observation in handling lumber is it not a fact that oftentimes you find that lumber is bright when taken from the stack but after being taken down and piled up in a dead pile and allowed to stand a few days will it not then mould?

A.#6 Yes sir it will do that if it happens to get a little rain, enough to dampen it, it will damage.

Q.#7 Did you see any of the lumber known in this controversy as the C. V. Young lumber?

A.#7 I do not know that I did.

The depositions of C. V. Young and others taken before me, Myrtle Johnson, a Notary Public, for Lee County Va., at the residence of N. L. Johnson in the town of Pennington Gap, Va. by agreement, to be read as evidence in behalf of the plaintiffs in a certain suit in equity pending in the Circuit Court of Lee County Va. in which A. Johnson and N. L. Johnson are the plaintiffs and L. G. Glass and J. P. Glass are the defendants.

Present J. C. Noel for the Plaintiffs and E. W. Pennington for the Defendants.

C. V. Young a witness of lawful age being duly sworn deposes as follows.

Q.#1 Are you the same C. V. Young who has here-to-fore deposed in this case?

A.#1 Yes sir I am the same person. I reckon I am the same C. V. Young.

Q.#2 State as well as you remember at what season of the year the timber was cut down off the stump that was manufactured by L. G. & J. P. Glass a portion of which was sold to the plaintiffs in this case and a portion of which was taken to Duffield and sold to Cecil Duff by the defendants.

A.#2 The timber was cut down off the stump in the spring of the year 1902.

Q.#3 When was it then manufactured into lumber?

A.#3 The following fall and winter, that is the Dry Creek yard. The Mountain yard was sawed into lumber first and on July 21st 1902 L. G. & J. P. Glass paid me \$479.72, when this payment was made they were still manufacturing the Mountain yard, and before July 21st 1902 and the time the Dry Creek yard was completed why the Ridge yard was manufactured.

CROSS EXAMINATION.

Q.#4 Who cut the timber from the stump if you remember?

A.#4 Henry Chaffin.

Q.#5 Do you remember when Early sold this timber to Glass?

A*#5 I think I sold it to Early in 1901. I beleive that is the date and they did not keep the timber very long until it was turned over to the Glass boys.

Q*#6 Was not a part of this timber cut from the stump in the winter of 1902?

A*#6 It might have been, I do not know myself.

Q*#7 What is your best impression as to whether it was or was not?

A*#7 It was in the latter part of the winter or the early part of the spring, that is my recollection about it, I am not sure.

Q.#8 Do you recollect approximately how much there was of the timber on the Ridge yard?

A*#8 156469', that is on the first Ridge yard.

Q*#9 What became of the lumber, if you remember, that was sawed at this Ridge yard?

A*#9 I could not say, but I know that they hauled it from the yard towards Pennington Gap, that is the 156469', they started in this direction with it.

Q*#10 State whether or not that the logs at the Ridge yard was damaged before they were sawed.

A*#10 Some of the sap turned black, it would be a foot or so on each end generally and sometimes not so much. I suppose the log would shrink some too.

Q.#11 Were you about the mill while this Ridge yard was being sawed?

A*#11 Yes I was there.

Q.#12 State whether or not that you observed that any of the sap on the lumber after it was sawed was doty.

A*#12 I did not notice whether it was or not. It had begun to turn dark at the ends.

And further this deponent sayeth not.

Paid by the plaintiffs fifty cents.

A. Johnson another witness of lawful age being duly sworn deposes and says,

Q.#1 Are you the same A. Johnson that has here-to-fore deposed in

this case?

A.#1 Yes sir.

Q.#2 Have you had a great deal of experience in the manufacture of logs into lumber, if so state how much?

A.#2 Yes sir I have been in the business for about twenty three years.

Q.#3 What is the usual effect on the sap of a log to cut the timber from a green stump in the spring of the year and to allow that timber to lie in the woods several months before it is manufactured into lumber?

A.#3 My experience has always been that timber cut at any time of the year especially in the spring if it lay until June or July the sap will damage very materially, that is within two ~~feet~~ ^{feet} of each end. It will get a kind of a brownish color and it looks when it is sawed into lumber more like dry rot.

Q.#4 Is that dry rot or damage that you speak of what you commonly call dote?

A.#4 Yes sir and if it lies together in bulk a while, especially through a wet time that portion that is affected will grow a mould on it, a wet mould in between the boards and we sometimes have to pick the boards apart.

Q.#5 What effect does that white mould have on the grade of a board

A.#5 It lowers it nearly always one grade and very often two grades

Q.#6 State if you have made any right recent observations as to the effect on the sap of a log as to have the log cut down either in the late winter or early spring and allowed to lay over something like six months or a year before it is sawed into lumber. If so state what that observation has been.

A.#6 Yes sir. I had a few logs that were cut this winter a year ago that were hauled down here to Mr. Tubb's mill, and I was wanting some 5/8 lumber, a few hundred feet, and I went down there to see if we could get it out of those logs and they

were sawing the largest log, probably three hundred feet in the log, and I was disappointed in the way the log sawed out. It showed a patch of rotten wood even inside of the sap. That was caused by the log lying through the summer weather.

CROSS EXAMINATION.

Q.#7 You stated in your deposition given next before this that you found from fifty to one hundred thousand feet of the lumber delivered by the defendants to you which came from the Elkanah Young yard and the C. V. Young yard that appeared to be doty. Did you mean to state in that, that each and every board of that one hundred thousand feet was doty?

A.#7 No sir. That amount of lumber had some of that kind of lumber in it. I did not mean that each and every board was doty.

Clint Godsey another witness of lawful age and being duly sworn deposes as follows.

Q.#1 State your age, residence and occupation.

A.#1 29 years, Pennington Gap, Va., day laborer.

Q.#2 Do you remember th Glass brothers in the year 1902 or 1902 hauling lumber to Pennington Gap to Mr. Johnson?

A.#2 Yes sir I remember of two ricks.

Q.#3 State if you know the character of the lumber in those two ricks.

A.#3 Some of it was damaged by the sap being doty like.

Q.#4 State how you came to notice the damage or dote on this lumber.

A.#4 I noticed by the grading of it. I was helping handle the lumber.

Q.#5 About how much do you think was in those two ricks that you say had this damaged lumber?

A.#5 There was right close to one hundred thousand feet of it in those two ricks. They was awful large ricks.

Q.#6 Did you notice any of this lumber while it was being unloaded

from the wagons whether it was damaged or not.

A.#6 Yes sir I noticed it and helped unload it. I measured some few loads of it, for there was a party hauling that they had to pay for his hauling of it and it had to be measured and I measured it off the wagon for Mr. Glass.

CROSS EXAMINATION.

Q.#7 From what yard was these two ricks?

A.#7 I do not know what yard these were from, it was from off the creek.

Q.#8 When did Mr. Johnson tell you how much there was in those two ricks?

A.#8 He never told me at all. I saw the ricks.

Q.#9 How did you know if no one told you how much there was in them

A.#9 I have handled and measured enough, and seen enough ricks to guess right close how much were in the ricks.

Q.#10 How large were these ricks?

A.#10 They were about sixteen feet wide and ^{about} sixteen foot high.

Q.#11 How did you get the lumber on the top to get them sixteen foot high, did you have a ladder?

A.#11 No sir, they put it up off of the wagons.

Q.#12 Did you help to grade all of those two ricks?

A.#12 I helped to handle all of it, but did not grade it of course.

Q.#13 What did you do towards handling it?

A.#13 I hepped load some of it on the cars, took some to the mill and what we did not work was put on the hill on the yard.

Q.#14 Who inspected it and graded it?

A.#14 Sam Stewart part of it and Davidson part of it.

Q.#15 State whether Davidson and Sam Stewart measured and inspected the whole of these two ricks.

A.#15 As well as I remember they did.

Q.#16 When was it that they graded and inspected these two ricks?

A.#16 I cannot give the day, it was along in July 1903.

Q.#17 Where were these ricks located?

A.#17 They were located right this side of the mill.

Q.#18 On which side of the road?

A.#18 On the right hand side between the County road and the railroad and on the same side of the road that the planning mill is on.

Q.#19 Who was present representing Glasses while it was being taken up by Stewart and Davidson?

A.#19 Glass was present, I don't believe is what they call him.

Q.#20 Where was Mr. Johnson at the time they was taking up this lumber?

A.#20 He was there part of the time.

Q.#21 I want you to think and say whether or not this lumber was all taken up on or before the fourth day of July 1903?

A.#21 I do not remember.

Q.#22 Was the whole of these two ricks taken up at the same time that is I mean beginning on it and continuing until it was all completed.

A.#22 Yes sir.

Q.#23 How many days did it take to take it up?

A.#23 I do not know.

Q.#24 What is your best recollection as to the number of days?

A.#24 I could not tell.

Q.#25 Did Mr. Johnson assist in inspecting any of these two ricks?

A.#25 I do not remember exactly but he was about part of the time.

Q.#26 I may refresh your memory, did he not himself inspect the whole of the part of these two ricks which came from the C. V. Young land?

A.#26 I do not know which came from the C. V. Young land.

Q.#27 Do you not know it to be a fact that the two ricks ~~if~~ did come from the C. V. Young and Elkanah Young land, or at least did you not understand it when you were inspecting it?

A.#27 No sir I didn't know where the lumber came from.

Further this deponent sayeth not.

L. G. Glass et al
vs Dup.

A. + N. L. Johnson

Filed Feb. 15th
1904 W. C. T. Evening
Clerk

No. 2

W. C. Glass, 15
J. P. Glass, 15
M. L. Johnson
C. V. Young
A. G. Johnson
Clint Godsey

road end on the same side of the road just the plowing mill -
on the right hand side between the C. V. Young road and the rail-
road on which side of the road?
from west located right this side of the mill.

The deposition of Elkannah Young taken before me Jas. M. Durham, a Justice of the Peace for Lee County Va. at the residence of Elkannah Young in Lee County, on the 15 day of February, 1904, by agreement, to be read as evidence in behalf of the Plaintiffs in a certain suit in equity depending in the Circuit Court for Lee County Va, in which A. Johnson and H. G. Johnson are the plaintiffs and J. P. Glass and L. G. Glass are the defendants.

Said deposition taken upon interrogatories submitted by the Counsel for the several parties.

Elkannah Young a witness of lawful age born & duly sworn deposes and says:

Ques (1.) Are you the Elkannah Young who has heretofore deposed in this case?

Ans I am

Ques (2.) Please state whether or not you ever heard L. G. Glass express himself as being satisfied with the grade and measurement which the plaintiffs were giving him on his lumber? If you say you have please state as nearly as you can what he said and when and where it was at and which yards did he allude while talking

Ans. In conversation with L. G. Glass he expressed himself as being well satisfied with measurement and inspection that A. Johnson were giving him, that he had never dealt with a fairer man than A. Johnson. This conversation occurred sometime in the year 1902, and alluded to the yards on the C. B. Young land and also on the Dry Creek yard, all of which Glass told me he sold to A. Johnson.

Ques. (3) Please state what brought about the above conversation between you and L. G. Glass?

Ans. I told Mr. Glass in speaking of his trade with Mr. A. Johnson in regard to his lumber deal, if he did not mind Johnson would skin him and Glass remarked, I have no fears, I never dealt with a fairer man in business than A. Johnson.

E. F. Young

I hereby certify that the above deposition was sworn to and subscribed before me this 15th day of February 1904.

Jas. M. Durham, J.P.

Witness, fee	\$0.50
Justice	75
	<hr/> \$1.25

A. S. H. L. Johnson
vs { Dr Charles
J. B. & L. G. Glass
Filed Feb. 16th 1904.
H. S. Croning Clerk

E. H. Young.

Wet .50
Justice .75
\$1.25

The depositions of E. R. Taylor taken before me, Myrtle Johnson, a Notary Public, in and for the County of Lee, state of Virginia, on the eighth day of Feb. 1904, pursuant to agreement before the parties to be read as evidence on behalf of the plaintiffs, A. & N. L. Johnson, in a certain suit in chanceory now pending in the Circuit Court Lee County Va., wherein said A. & N. L. Johnson are Plaintiffs and L. G. & J. P. Glass are Defendants. Present A. Johnson for the Plaintiffs and E. W. Pennington for the Defendants.

Q. #1 Give your name, age, residence and occupation.

A. #1 E. R. Taylor, 39 years, Osaka, Wise Co., Va. mechanic.

Q. #2 State whether or not you are acquainted with the parties to this suit.

A. #2 Yes sir I know each party.

Q. #3 State whether or not you were ever employed by the plaintiffs in this suit and if so engaged, when, state what business, and how long.

A. #3 Yes, I was in their employ fourteen months and something. I commenced in July or August one 1901, the books will show when I commenced, and I quite about November 14th 1902.

Q. #4 Did you, while working at the planning mill, ever have any talk with the teamsters who were hauling the Glass lumber as to where they should put it, and if so what did they say?

Obj. The foregoing objected too because when conversing with any person other than with the defendants or in the presence of the defendants, is no evidence against the defendants in any part. E. W. Pennington.

A. #4. Well Mr. Johnson told me to have the lumber put off at a certain place on the yard and when the wagons came in the next day I went out and told them where we wanted the lumber put and they wouldn't put it down there, said that Mr. Glass said for them to put the lumber all together. I am pretty sure that I told them that if they put it across the road they

would have to pay extra for handling it. I went out there the third day and told them and I could not do anything with them and I thought it wasn't any use to talk to them any longer so I just let them alone.

Q. #5. Did they put the lumber where you wanted them to put it?

A. #5. No sir.

Q. #6 Were you about the lumber yard occasionally, almost daily while this lumber was being hauled and while it was being taken up?

A. #6 Yes sir I was on the yard every day while I worked at the mill.

Q. #7. State how this lumber was manufactured, that is, what thicknesses principally and so on?

A. #7 To the best of my recollection the good was cut 5/4, 6/4, & 8/4 that is, the principal part of the good, that is the 5/4, 6/4 & 8/4 all run good while the inch run cully.

Q. #8 What do you mean by good? Selects and better?

A. #8 Yes, I might say common and better.

Q. #9 Did you see either one of the Glass brothers about while the lumber was being inspected?

A. #9 Yes sir?

Q. #10 Did you ever hear them make any complaint about the grade they were getting?

A. #10 I never did.

CROSS EXAMINATION.

Q. #11 If I understood you, you said that the Glass teamsters put some of the lumber hauled by them across the road and they had therefore been previously hauling and putting it on that side of the road.

A. #11 They had hauled some and put it on that side of the road and Mr. Johnson and Mr. Glass had taken up that pile of lumber and Mr. Johnson said for me not to have any more put over there.

Q. #12 You said, if I understood you, in your examination in chief that the teamsters said that Mr. Glass said he wanted to keep

all the lumber together, were there not some already ~~was~~ across the road?

A.#12 The reason they did not want to put it there was because it was between some of Mr. Johnson's lumber and they were afraid it would get mixed.

Q.#13 You said that you saw the Glass brothers about while the lumber was being inspected, state which of the Glass brothers you saw.

A.#13 If I had my book I could tell you for I sold them some ceiling and siding but do not remember which one it was.

Q.#14 How often did you see the Glass gentleman to whom you had sold the lumber, about the yard while the lumber was being inspected

A.#14 To the best of my knowledge there was no lumber taken up without one of them being on the lumber.

Q.#15 How often did you see them then, the number of times?

A.#15 I could not state how often.

Q.#16 How far away were you working from where they were working while the lumber was being inspected?

A.#16 They were up on the hill, of course my work was in the planning mill and when I was not busy in the planning mill I would go up on the yard and stay fifteen or twenty minutes or longer on the yard at a time.

Q.#17 Your work is not close enough to where they were inspecting lumber, was it, to hear what Glasses should say in the event that they did complain of the inspection?

A.#17 No sir, of course I could not have heard them down in the mill, I was there with them some every time and I did not hear any grumbling at all.

Q.#18 For instance, as far as you know yourself about it, you do not know whether they did complain or did not complain.

A.#18 I know I never heard them complain while I was there. I do not know what they did during my absence. It is a common occurrence for people to be scrapping on the lumber pile but I never heard them complain or grumble.

Q. #19 They had opportunities to complain without you hearing them?

A. #19 Yes sir.

Signature waived.

A v N. L. Johnson
vs } Depositions

L. G. and J. P. Glass

Received by mail in
good condition and filed
Feby 11th 1904.

H. C. T. Erving Clerk

E. R. Laylor

The Depositions of Hery Chafin and Eli Million, taken before me L.T. Hyatt, Special Commissioner in the chancery cause of Pennington Lumber Co., Complts., vs L.G. Glass, et al, Defendants, to be read on the behalf of the defendants in said cause, at the office of the said L.T. Hyatt on the 25th day of November, 1904.

Present R.L. Pennington and C.T. Duncan for Defendants,

Orr and Noel for the Plaintiffs.

Henry Chaffman, a witness of lawful age being first duly sworn deposes and says:-

Ques. 1. State your age, residence and occupation:

Ans. Age 35, residence Stickleyville, Lee Co. Va., occupation principally farming.

Ques. 2. Were you acquainted with the timber bought and manufactured by L.G. Glass and others on the lands of C.V. Young?

Ans. Yes, I cut the timber in the woods, that is I had the contract to cut it, and hired hands to help me do the work:

Ques. 2

Was all this timber yarded at one set, or was it placed at different sets, and if at different sets, how many and what were the sets called?

Ans. It was yarded at three different sets, The first set that was yarded was called the Mountain yard, the next seat that was yarded was the east set on the ridge, and the next set that yarded was the Dry Creek Yard.

Ques 4. Have you been informed or know who bought the lumber manufactured at these several yards, and if so who were they:-

Ans. I, am informed that Johnson got the east yard on the Ridge and that Duff's got the other two yards of lumber.

Ques. 5. Did you help saw either one of the sets of lumber, and if so which one was it?

Ans. I helped to saw into lumber at the mill the east yard.

Ques. 6 What did you work at while sawing at that yard?

Ans. Part of the time I barked peeled logs and part of the time helped to bear off the lumber.

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Ques.7 While helping to saw the said logs did you observe the timber, and if so did you see any of the timber that had been damaged by laying in the woods?

Ans. I did observe the timber and there was none that I saw that was damaged by laying in the woods.

Ques. How was the sap on this yard of logs, was it rotten, damaged, or was it green?

Ans. Well the logs that had been lain in the woods and logged about the time of the sawing was nice and green and there was no dead sap on them, and they peeled nicely. There was a few small gull logs that had been yared early in the spring and lay therein the sun in the weather and the sap on a few of the logs was dead all round, but they were very few.

Ques. You say that you cut the other two yards of this timber, which in your judgement was the better timber the east yard or the other two yards?

Ans. The east yard was the better timber of the three.

Ques. In what respect was it the best?

Ans. It was the prettiest straightest logs and more yellow poplar in it, and the biggest timber was on this yard.

Ques. Which one of the sets lay in the woods longest, the east yard or the dry creek yard?

Ans. The Dry Creek Yard.

Ques. How much the longest?

Ans. It lay there from some time in November to the next April the longest.

Ques. Which of the tree yards was damaged the worst, and state why?

Ans. The Mountain Yard was damaged worst if any thing because it was peeled in the woods and rolled down through the fields over the rocks and other things.

Ques: In your judgement from the quality of the timber which one of the sets of timber would have manufactured the best grade of ~~tim~~ lumber?

Ans. The east yard.

Ques. How long have you been dealing

in cutting and handling timber?

Ans. Off and on, about 18 years. ~~xxx~~

Ques. Have you observed timber enough to know about the kind of lumber that can be manufactured from it?

Ans. I think that I can, as far as it can be done by looking at the logs.

Ques. While they were logging the east yard about how many teams were necessary on the average to haul the logs?

Ans. I have seen as high as 8 head hold of one log, and they usually used four and six horses or mules to the log.

Ques. What kind of teams were used?

Ans. They looked to me like they were pretty good teams.

Cross-Examination by J. C. Noel, attorney for the Pliffs.

Ques.--How much lumber have you ever manufactured?

Ans.--I have not manufactured any.

Ques.--How much experience have you had in grading and inspecting lumber.

Ans.--I haven't had any. I have handled some lumber in working at saw mills and things.

Ques.--What kind of work did you do about the saw mill?

Ans.--I have off-born, peeled logs, and helped stack lumber.

Ques.--Have you ever dealt in lumber in any way?

Ans.--No sir, not to either buy or sell.

Ques.--Do you claim to understand what constitutes the different grades of lumber?

Ans.--I am not going by the lumber at all, I am just going by the logs. I helped to saw the timber, and that is all I have got to go by.

Ques.--Then you do not claim to be a practical lumberman?

Ans.--No sir.

And further witness saith not.

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Eli Million, another witness, being first duly sworn, deposes as follows:

Ques. 1.--State your age, residence and occupation?

Ans.--I am 24 years of age, reside at Stickleyville, Lee County, Virginia, and am a farmer mostly.

Ques.--Were you acquainted with either one of the saw sets of timber which the Glass boys manufactured into lumber on the C. V. Young land?

Ans.--Yes, I was acquainted with two of them. I set the ratchets at the mill which sawed the East yard and the Dry creek yard.

Ques.--At the East yard while you were setting ratchets for the sawing of that timber, did you observe any of the timber being rotten or damaged, and if so state what it was?

Ans.--Well, there was some of the yard sawed before I went to work at it, but not very much. After I went to work at the mill, there was not any of it damaged by laying in the woods, the best I know about it.

Ques.--Has the man who sets ratchets at a saw mill got a good opportunity for observing the kind and character of the timber that is sawn?

Ans.--Well, I think he would have.

Ques.--Does he not have to assist in handling every log that passes through the mill?

Ans.--Yes, he has to handle every log, or at least I did.

Ques.--Does he help to turn the log on the saw carriage?

Ans.--Yes sir, he helps to turn the logs.

Ques.--What did you do at the Dry Creek yard?

Ans.--I did not work all through that yard either. I quit before the yard was finished. What time I worked there, I set ratchet.

Ques.--Which was the larger, smoother, and better timber, that sawn at the East yard or that sawn at the Dry creek yard?

Ans.--On the East yard.

Cross-examination by J. C. Noel, atty for plffs.

Ques.--I suppose you examined the logs pretty carefully as they were rolled upon the carriage and sawed did you?

Ans.--Why no, I never examined them particularly, but I know a bad log from a good one, or at least I think I would.

Ques.--How much experience have you had in saw-milling and lumbering

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Ans.--Well, I havn't had very much Just what little work I have done
aroand the mill is all.

Ques.--How long did you work on the East yard?

Ans.--I don't know how many days, but I worked throgh a right smart
over half the yard.

Ques.--In what year was that East yard sawed?

Ans.--I don't know as I remember now, for I never paid no attention
what ear it was.

Ques.--Have you ever had any experience in grading and inspecting
lumber?

Ans.--No sir.

And further witness aith not.

94 cts

Eli^{his} Millson
marks

The above depositions taken subscribed and sworn to before me
Nov. 25th 1904.

L. T. Hagan
Special Commissioner.

Special Commissioner.

Nov. 22nd 1884.

The above deposition taken and subscribed before me

at New York

on the 22nd day of November 1884.

A & N. S. Johnson

Deposition

J. P. & L. G. Glass

Nancy Chapman
Tel. Millie

and told the story.

Yes. I don't know for many years but I worked through a shift about

three. How long did you work on the last year?

Working the mill is all.

Yes. Well, I haven't had very much. Just what little work I have done

The depositions of J. T. Whitteker, and others, taken before me L. T. Hyatt, Special Commissioner in the chancery cause of Pennington Lumber Co. vs. L. G. Glass et al., on the 9th day of September, 1904, pursuant to agreement of the parties by their attorneys, at my office in the town of Jonesville, Virginia, to be read as evidence on behalf of the plaintiffs in said cause.

Present:--J. C. Noel, J. W. Orr, attys. For plaintiffs.

R.L.Pennington, and C.T.Duncan, attys for defts.

The witness J. T. Whitteker, being first duly sworn, deposes as follows:

Q.1.--State your age, residence and occupation?

A.--I am 65 years of age, reside on Wallen's creek, below Stickleyville, and am a farmer.

Q.2.--Are you acquainted with L. G. Glass, one of the defendants in this cause?

A.--I am.

Q.3.--State whether or not, while the said L. G. Glass was delivering lumber to the Pennington Lumber Company, at Pennington Gap, Virginia, from the C. V. Young yards of lumber, or from the Elkanah yard of lumber, you had a conversation with the said L. G. Glass in reference to the grade and measurements that he was getting from said Pennington Lumber Co. or A. & N.L.Johnson; and if so, please tell what that conversation was?

A.--I did have a conversation with him while he was hauling from Mr. C. V. Young's. The way it came about, I had some timber of my own that I expected to put on the market, and he remarked to me that Mr. Johnson wanted to buy my timber, and I asked him about what kind of inspection and grade he was getting, and he said Mr. Johnson was as fair a man as he ever dealt with, and that he gave him good inspection and good measurement. Perhaps there might have been other talk, but that is the substance of it. He advised me to sell to Johnson, and said that Mr. Johnson would advance me any amount of money on my lumber ~~on my lumber~~ that I might want, or something like that.

Q. 4. --State as nearly as you can when the conversat on you have just detailed took place?

A.--I am a little inclined to the opinion that was in June some-time, 1903.

Q. Cross-examination.

Q.1.--At what place were you and Mr. Glass when you had the talk with him, you speak of?

A.--In the yard of Blue Spring church, standing under the shade of a large oak tree, just in front of Mr. Glass' house.

Q.2.--Were there any other persons present?

A.--No sir, I think not. I was on my way home from Stickleyville, and saw Mr. Glass there. I am satisfied there was no one else present.

Q.4.--And further witness saith not.

J. J. Whittaker

P. T. Early, another witness of lawful age, being first duly sworn, deposes as follows:

Q.1.--State your age, residence and occupation?

A.--I am 42 years of age, reside on the head of Wallen's creek, and have been in the saw-mill and lumber business pretty much all my life.

Q.2.--Were you acquainted with the C. V. Young timber that was sold to L. G. and J. P. Glass, both at the time it was s so sold, and at the time it was being manufactured into lumber?

A.--I was not so well acquainted with it when it was being manufactured; I was when it was being sold to them pretty well.

Q.3.--At the time said timber was sold to the said Glass' was said timber standing, or felled?

A.--It was felled. A portion, and I think all of it, was cut into saw logs.

Q.4.--State, as nearly as you can, when said timber was felled and cut into saw stocks?

A.--I don't know that I could state the year. I think we commenced cutting it just after crops were laid by.

Q.5.--About how long had it been felled before it was sold to the Glasses?

A.--I think we had it cut beginning about July or August, and I think it was sold to the Glasses along about Christmas, or in January following.

Q.6.--State whether you saw any of said timber while it was being manufactured into lumber?

A.--Yes, we logged one yard--the yard on the mountain. In the contract we were to log it. I think we logged it some time the next summer after we sold it in January, but I can't state what time. My brother and myself bought the timber from Mr. Young and afterwards sold it to ~~Maxx~~ L. G. and J. P. Glass.

Q.7.--About how long after the timber was logged, was it until it was manufactured into lumber?

A.--To the best of my recollection, they commenced work on it the latter part of that summer or in the fall.

Q.8.--Was the mountain yard logged and sawed before or after the ridge yard?

A.--Before.

Q.9.--State the condition, as nearly as you can, of the timber at the time it was being logged?

A.--I did not see the ridge timber. The best I recollect about the timber on the mountain, the bark had slipped, or begun to slip on it at the time we logged it.

Q.10.--As a saw-mill man and lumberman, have you had any experience in manufacturing timber into lumber after it has lain in the woods long enough for the bark to slip and observed it effect upon the lumber manufactured therefrom?

A.-- I have.

Q.11.--State the result of your experience and observation as to how the lumber is affected, particularly poplar?

A.--Well my experience is in regard to poplar timber when it is cut and sawed into logs, that it sap blacks, or runs in from the ends of the log when it lays over till the sap raises the next year.

Q.12.--About how far into each end of the log does this sap black usually extend?

A.--Well, it depends upon the sap of the timber a good deal, and upon the size of the timber. It don't run as far in on large timber as on small, as the sap it not as heavy. I have seen it run in as far as 18 inches on each end.

Q.13.--How does this blacking of the sap effect the grade of the lumber?

A.--It reduces a board from its grade, or lowers the grade.

Q.14.--Is a log, or the sap boards of a log, affected in grade by timber laying in the woods sufficiently for the bark to slip on the log, and if so, how are said sap boards effected?

A.--They are affected generally bad enough that they are generally classed as shipping culls, in selling the lumber.

Q.15.--Knowing the C. V. Young timber as you say, and judging from the tim~~ber~~ the said timber was felled and the time it was manufactured into lumber, would said lumber be lowered in grade?

A.--Yes sir.

Q.16.--Then if the timber on the ridge side lay longer before it was sawed into lumber than the timber on the mountain, which would be damaged the worse?

A.--The ridge. It has a heavier sap as a general thing than the timber on the mountain

Q.17.--As I understand you, you say a log that has lain long enough for the bark to slip before manufactured into lumber, will reduce a sap board to a shipping cull?

A.--Yes.

Q.18.--Will that staining of the sap and ~~slipping~~ damage incident to the slipping of the bark, affect the grades known as ones and twos, and commons? If so, how?

A.--If you had a log that was larger at one end than the other, in squaring the log up, you would be liable to leave some sap on the corners of the board, and the same with respect to a crooked log, and would lower the grade of the board. If a board is so wide, and has sap on the edge of it, if the sap is sound and clear, it will not lower

the grade, but if the sap is stained, or brittle, or unsound it will lower the grade of that board.

Obj?--The foregoing answer and all other answers in the nature of expert testimony, or opinions of the witness, is objected to as evidence, because the witness has not shown sufficient acquaintance with, or properly qualified himself to give expert testimony.

C. T. Duncan.

Q.19.--Judging from your experience as a lumberman and a saw-mill man, and from your knowledge of the C. V. Young timber and the time it lay in the woods after it had been felled and cut into saw stocks or logs, what per cent of the lumber manufactured from said timber would be lowered in grade by reason of the slipping of the bark and the blacking of the logs at the ends and other damages, if any, to said logs by reason of the time that elapsed between the time the trees were felled till the logs were sawed into lumber?

Obj.--The foregoing question and any answer thereto is objected to as evidence because the witness has not shown such experience as a lumberman and saw mill man as entitled him to give evidence as an expert.

C. T. Duncan.

A.--That would be a mighty hard question to answer, as I didn't understand the way the lumber was sold.

Q.20.--Then supposing the lumber was sold and to be graded as shipping culls, commons, and ones and twos, what would be your answer to the above question?

Objected to for reasons stated in last objection?

A.--You can see readily that if the board that would be a common is damaged enough it would be a cull, and ones and twos might be damaged so as to make them commons. I never saw the lumber after it was manufactured, and so can't answer the question.

Cross-examination.

Q.1.--Did you hear of the sale of the lumber that was to be manufactured for the Glasses from the C. V. Young and Stout yards by them to Johnson?

A.--Yes sir, I did of the C.V.Young yard, but don't know anything

about the Stout yard.

Q.2.--How long before you heard of said sale by the Glasses to Johnson had you sold the C. V. Young timber to them?

A.--I heard it before they sold it to him. We had bought the timber for Mr. Johnson and were to manufacture it for him, and only agreed to sell it to them provided they would fill our contract with him.

Q.3.--If I understand you correctly, you had commenced cutting this timber in July or August preceding the time you sold to the Glasses, and heard that they had sold to Johnson? Is this correct?

A.--That is correct.

Q.4.--~~Which~~ Was part of this C. V. Young timber located on the ridge and part of it on the mountain: if so, state as nearly as you can the proportionate amount on the ridge and on the mountain, and also state, if you can, which was cut first?

A.--Yes, part was on the ridge and part of the mountain. There was the most on the ridge side. My recollection is that there was 84,000 feet on the mountain side, and I do not know the amount on the ridge side, but there was more on the ridge than on the mountain. I can't remember which ^mtiber was cut first.

Q.5.--Had all this timber been cut ready for logging at the time you sold to the Glasses?

A.--It was to the best of my recollection.

Q.6.--How long after you sold to Glasses until you commenced logging the timber on the mountain side?

A.--Some of it was logged when we sold. Some time the coming summer when we logged it.

Q.7.--What number of logs on the mountain side logged by you did you find upon which the bark would slip or had slipped?

A.--I can 't answer at all. I took no note of that.

Q.8.--When you purchased this timber, commenced cutting it, when did you expect to saw it?

A.--The best I recollect was that our contract was that we were to commence sawing it that fall.

Q.9.--Had you sawed any of it up to Christmas of that year?

A.--No sir, that is we hadn't sawed any into lumber.

Q.10.--At Christmas of that year, and before you began negotiations for a sale to the Glasses, what was your calculations as to the time when you proposed to saw that timber into lumber?

A.--We had more work on hands than we could do, and saw that we could not reach that timber when we had expected--we expected when we began cutting the trees that we would log and saw the lumber right away--and that is one reason that made us sell out to the Glasses. I can't answer just when we expected to get to it at the time we sold to Glasses.

Q.11.--At the time you sold to Glasses, was you aware of the fact that some of said logs had damaged, and did you so represent it to them?

Obj.--The foregoing question and any answer thereto is objected to because immaterial and irrelevant.

Orr & Noel.

A.--I don't think the logs were damaged at the time we sold to Glasses.

Q.12.--When then did they damage?

A.--When the sap raised in the summer and it turned hot.

Q.13.--Do you know what time in the year after you sold this timber to the Glasses they commenced sawing it into lumber?

A.--No, I couldn't state what time, positively.

Q.14.--Were the logs that came from the mountain mostly large or small logs?

A.--Well sir, there were some very large and some very small, and I can't state which there were the most of.

Q. 15.--Who cut the timber on the ridge side?

A.--Henry Chaffin.

Q.16.--Do you know whether he had cut them on the ridge before the sale to the Glasses?

A.--I think they were.

Q.17.--About what time does the sap go down in trees?

A.--My experience is that it starts down in August.

Q.18.--Most of this timber, then, was cut was it not after the sap had gone down, and before it rose again the next year?

A.--Yes, the most of it.

Q.19.--Did you see a y of this lumber after it was manufactured?

A.--Yes, I saw it at a distance, but I made no close observation o it in any way.

Q.20.--Then as a matter of fact, you do not know whether any of it was damaged by the sap going in or not do you?

A.--Nothing only what I handled on the mountain side. The ends of the logs there were sap blacked.

Q.21.--Do you know as a matter of fact that there was a single board that was sawed out of those logs that came from the mountain that was sap blacked?

Am--Not by seeing or examining the lumber, only by seeing the logs.

Re-examination.

If

Q.1.--~~Will~~ a popler tree is cut down in the summer, autumn, or winter of one year, and left lying until the following spring or summer, will the sap rise in that tree so as to cause the bark to peel or slip off?

A.--It will unless it is cut in the early spring when the sap is just raising enough to swell the bugs, and in that case the tree will die.

And further witness saith not.

P. J. Early

P. J. Early

A. N. L. Johnson

us } Depositors

J. P. + S. G. Glass

J. F. Whitaker
B. T. Early 25

Early 25

The deposition of J. F. Hinkle, taken before me, Myrtle Johnson, a Notary Public, of the county of Lee, State of Virginia, by agreement of the parties at the office of E. W. Pennington, Pennington Gap, Va. 6th day of January, 1904. To be read as evidence in behalf of A. & N. L. Johnson, in a certain suit in equity depending in the circuit court of Lee County of Virginia, and wherein the said A. & N. L. Johnson are the plaintiffs and L. G. & J. P. Glass defendants.

Present, J. C. Noel, counsel for the plaintiffs and E. W. Pennington, counsel for the Defendants.

H. J. F. Hinkle, as a witness of lawful age, being duly sworn, deposes and says as follows:-

Q. 1 State your age, residence and occupation.

A. Age, 43, reside one mile west of Stickleville, and am a farmer & carpenter.

Q. 2 Are you acquainted with L. G. & J. P. Glass?

A. Yes.

Q. 3 State whether or not you sold any poplar timber to L. G. Glass or J. P. Glass, and if so, state when it was as nearly as you can remember.

A. I sold L. G. Glass some timber, as near as I could remember without looking at our contract, would say that it was in 1899 or might have been in 1900. Not later than 1900.

Q. 4 When and where was that poplar timber sawed into lumber?

A. It was sawed, at the best of my recollection, in 1901-2. Latter part of 1901 or early part of 1902, at Wallen's Creek Lee Co., Va.,

Q. 5 State if you know whether that timber was sawed with the mill that manufactured the Stout Timber and C. V. Young timber into lumber.

A. Yes sir.

Q. 6 State whether the timber, purchased by you from L. G. Glass was sawed before or after the C. V. Young Timber?

A. It was sawed before the C. V. Young timber, and to the best of my recollection, before the Stout Timber. I think the mill was moved from my house to the Stout Timber.

Q. 7 Was your contract with L. G. Glass for this timber in writing?

A. Yes.

Q. 8 Have you that contract or a copy of it?

A. Yes, I have a copy of it.

Q. 9 I will ask you to send that copy of it to the Notary Public, Myrtle Johnson, marked "L. G. Glass contract," to be fil-

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ed with your deposition in this suit.

A. I will file the same with the Notary Publis as requested.

Q.

Cross-examination.

Q. 1 Please tell about how much there was of the poplar timber spoken of by you, and which you sold to L. G. Glass .

A. The best of my recollectionis that there was somewhere between 30 and 35 thousand feet of the poplar. I am not positive.

Q. 2 Was it measured in the log?

A. Yes sir.

Q. 3 Who measured the same, if you remember?

A. L. G. Glass measured the greater part. A fellow by name of Hicks measured some.

Q. 4 State whether you have been furnished a statement of the poplar.

A. Yes sir. The statement of the poplar, but I don't just remember what it was.

Q. 5 Do you remember whether you have a statement which he gave you of the poplar logs?

A. No sir.

Q. 6 Will you look for it when you go home, and if you find it, will you send it to the Notary Public?

A. Yes.

Q. 7 ~~Mrx~~ Didn't Mr. Glass let one Letcher Horn have some of the poplar lumber out of the logs which you sold to said Glass?

A. Yes sir.

Q. 8 About how much did he let Mr. Horn have would you suppose? and for what purpose?

A. A. I couldn't say how much. Don't think any poplar to amount to anything, except 3 sets of sleepers and joists in the house.

Q. 9 Did you ever see the bill of the stuff which Mr^r Horton got from Mr. Glass?

A. Yes sir. I don't remember how much it was.

Q. 10 Do you know where that bill is?

A. No sir.

Q. 11 When you go home, will you send it to the Notary Public?

A. Yes sir, if I find it.

Q. 12 What became of the other poplar outside of that which Mr. Horn got?

A. I was informed that it was short-hauled from the Yard to Stickleville and from there to Pennington Gap, but I don't know how that is myself.

QO The foregoing question or any answer thereto is objected to because wholly hearsay.--J. C. Noel.

Q. 13 After the logs which you sold to Mr. Glass were sawed, were they stacked?

A. Yes sir.

Q. 14 If you remember, tell in how many ricks the lumber was stacked.

A. The poplar, I think, was in 3 ricks.

Q. 15 Is there any of this poplar yet on the yard, where it was sawed?

A. No sir.

Q. 16 About how long ago has it been since said lumber was moved from the yard where sawed?

A. I don't know. Can't think of anything that would make me recollect.

Q. 17 You say in your examination in chief, that you sold the logs to Mr. L. G. Glass possibly in the year 1899 or 1900. Who paid you for the lumber, if you have been paid?

A. L. G. Glass.

Q. 18 State whether J. P. Glass was known to be concerned at all either in the purchase of you or the settlement with you.

A. No sir.

Q. 19 Do you remember who hauled said lumber away from the yard where sawed?

A. Not all of them. Some of them were Geo. Levasy, James Debourne, and Emmett Glass. Don't remember all the drivers.

Reexamination.

Q. 1 When and how did L. G. Glass pay you for said lumber?

A. Well, he paid me some in sawing, some in the store, and after I had settled my store account and sawing bill, I know he never paid me more than \$1.00. The remainder has never been settled. It was paid at the time he was doing the sawing.

Q. 2 That part of the payment that you received out of the store, was it paid at the little store kept by L. G. & J. P. Glass on Wallen's Creek?

A. At the store, below Stickleville, I traded on orders that from L. G. Glass addressed to J. P. Glass. I don't think there was more than \$5.00 of that. The residue of my trading, I did at the store at Stickleville without an order from anyone. I had an account at that store.

Q

Further this deponent saith not.

Signature, _____ Waived.

Witness claims one day's time, which has been paid by the plaintiffs. Amount, 50cts.

W. E. Fletcher, another witness of lawful age, after being duly sworn, deposes and says:--

Q. 1

State your name, age, residence and occupation.

A.

My name is W. E. Fletcher, I reside on Wallen's Creek, aged 46 and am a lumberman, farmer and merchant.

Q. 2

Are you acquainted with ~~xxx~~ L. G. & J. P. Glass, the defendants in this suit?

A.

Yes sir.

Q. 3

Are you a member of the firm of Fletcher & Banner?

A.

Yes sir.

Q. 4

State whether or not you or your firm sold to L. G. or J. P. Glass any timber in the year, 1901-2?

A.

In 1902, we sold some to L. G. Glass.

Q. 5

What timber did you sell to him?

A.

We sold him the Stout Timber know as the Smyth Stout Yard and the Flannery Timber.

Q. 6

Did you sell him both the Stout & Flannery at the same time?

A.

No sir. We first sold the Stout stuff, with the understanding that shortly after that Mr. Glass was to take all the timber that we put in that yard, and at the same price that we sold him the Stout Timber.

Q. 7

Was you contract with him in writing or verbal?

A.

I am not able to tell. Our contracts are at Mr. Banner's. I think we did have a written contract, but am not positive.

Q. 8

About when did you sell him the Stout timber?

A.

Along about either February or January, 1902.

Q. 9

State whether or not that at the time you sold the Stout Timber, if it was the understanding that he was to take the Flannery Timber?

A.

If it was not at that time, it was soon after.

Q. 10

Do you remember how much of the Stout Timber was poplar? 173,175' of the Stout Timber.

A.

Q. 11

How much of the Flannery Timber, if you remember, was poplar?

A.

I think about 18,000'. Between 18 and 19 thousand feet of the J. M. Flannery Timber.

Q. 12

Do you know whether the Flannery Timber, in sawing the Stout Yard, was kept separate from the Stout Timber?

A.

No sir.

Q. 13

When and by whom was you paid for the Stout & Flannery Timber?

A.

We were paid by L. G. Glass. My best recollection is that we were paid for both Flannery and Stout Timber by him.

Q. 14

At the time you contracted for this Stout Timber, or at the time the Stout and Flannery Timber was measured or

5
taken up, state whether or not there was a store on Wallen's Creek known as the Glass Brothers' Store.

A. There was.

Q. 15 Who were the owners of that store?

A. L. G. & J. P. Glass were the men, I understood owned it.

Q. 16 Was it generally known in the community that L. G. & J. P. Were partners?

A. I think so.

Q. 17 About what time did it become known that L. G. & J. P. Glass had dissolved partnership in business, either in the goods or other wise?

A. I think it was some time along the middle of the summer of 1902. Between July and the first day of September, 1902.

Q. Cross-examination.

Q. 1 Where was the little store which has been spoken of in your examination in chief?

A. In the site of Stickleyville, near where Smyth Stout lives.

Q. 2 Were you about the mill while said logs were being sawed?

A. Yes sir.

Q. 3 As a lumberman, state whether you think they were sawed properly.

A. I think they were doing good work, with the exception of one log. They were sawing it thick and thin.

Q. 4 Did they have attached to the mill an edger?

A. Yes sir.

Q. 5 If L. G. and J. P. Glass were partners, do you know to what extent they were partners, in the ^{mill?} ~~J. M. Flannery Timber?~~

A. No sir.

Q. 6 State whether or not you ever heard them say they were partners in the J. M. Flannery Timber.

A. I did not.

Q. 7 State whether or not you ever heard either L. G. & or J. P. Glass say that they were partners in the Hinkle & Banner Timber.

A. No sir.

Q. 8 Did you hear them say they were partners in the Elkanah Young Timber?

A. No sir.

Q. 9 On whose yard was the Flannery Timber, which you sold to L. G. Glass, sawed?

A. On Jesse Wilson's land.

Q. 10 What became of the lumber sawed from the Flannery Timber, if you remember?

A. I suppose Mr. Johnson and the plaintiff got it.

Q. 11 If you remember, which was sawed first, the Flannery or

6
the Stout Timber.

A. The Stout Timber mostly, if not all.

Q. 12 As a lumberman, supposing the Stout Timber to have been manufactured in the proper manner, what per cent. should have been 1&2, Com. & culls, if properly graded and inspected, supposing all 6" boards and above were to be counted 1&2's?

A. I would put the 1&2's at 20%, com. at 35% and shipping culls at 35%. 10% mill-culls.

Q. 13 Did you see and observe the logs out of which this Stout & Flannery lumber was manufactured?

A. Yes sir.

Q. 14 Do you make the above statement of percentage from your own knowledge?

A. Yes sir.

Recross-examination.

Q. 1 Is it not often the case in manufacturing lumber that the outside appearance is good, while the log does not say to your expectations?

A. Yes. It is some times the case that a fellow will get ~~fa~~ fooled but if both ends are good, he can tell just about how it will saw out.

Q. 2 I believe you stated that you didn't particularly notice whether the timber was being manufactured carefully or not?

A. No sir, not particularly.

Q. 3 You were asked about Mr. Pennington in your cross-examination, if you had ever ~~xxx~~ heard either J. P. or L. G. Glass say if they were partners in the Floyd Hinkle, or Elkanah Young timber. State whether or not you ever heard them say that they were partners in the Stout, C.V. Young or Ozro Young Timber?

A. No sir.

Q. 4 Do you not remember that the lumber sawed at the Stout Yard was delivered to the plaintiffs, or have you only the words of Glass?

A. No sir, I don't know that it was.

Q. 5 Did you ever see L. G. or J. P. Glass hauling any of the lumber they manufactured on Wallen's Creek, or either the C. V. Young, Ozro Young, Stout Timber towards Duffield or whether they told you they were taking it there?

A. Yes sir. I saw them hauling the C. V. Young lumber. They short-hauled it and unloaded it near our store.

Q. 6 Do you remember about when you first saw them hauling this lumber?

A. Summer of 1903. This past summer.

Q. 7 About when did you see them haul on the Duffield Road?

A. The fall of 1903, along in October or November.

Q. 8 Do you know from whose land the timber came from that was called the Dry Creek Yard?

A. From Mr. C. V. Young's land.

Q. 9 I believe you bought some timber from J. M. Flannery, that was sawed on the north side of Wallen's Ridge in the year 1903?

A. Yes sir. We bought a yard of timber there.

Q. 10 State whether or not in the year, 1903, L. G. Glass tried to purchase that timber from you.

A. Yes sir.

Q. 11 The foregoing question or any answer thereto is objected to because Irrelevant and immaterial in this case.

A. At the time that L. G. Glass was negotiating the trade with you for the Smyth Stout timber, did he tell you who he was going to let have it?

A. Yes sir. I think he said Mr. Johnson, the plaintiff, in the case, was to have it.

Q. 12 At the time he was contracting to purchase the timber from J. M. Flannery on the north side of Wallen's Ridge, did he tell you that?

A. No sir.

Q. 13 Do you know of L. G. Glass' sawing any lumber on his own land in the year, 1902-3? If so, what did he do with the lumber?

A. Yes, he sawed a yard on his own land, 1902. My knowledge is that he was letting Mr. Johnson, the plaintiff, have this stuff. They hauled it this direction.

Q. 14 Did he say on which lot of timber he was trading it in with?

A. No sir.

Q. 15 Do you know how long ~~xxxxx~~ the timber which L. G. Glass manufactured on his own land, had been cut before being sawed?

A. No sir.

Recross-examination.

Q. 1 How far was the logs cut on his own land, from the logs cut on ~~Wallen's~~ Wilson's Yard?

A. Something like one mile.

Q. 2 About how much was there of that on his own land?

A. I don't know.

Q. 3 Have you no idea of the quantity?

A. I suppose there was 50 or 60 thousand feet.

Q. 5 What kind of lumber was it?

A. Poplar, mostly, I suppose. That is my understanding.

8

Q. 6.

Did you ever examine it after it was sawed?

A.

No sir.

Q. 7

How long, probably, was that upon his own land sawed before that on the Wilson Yard?

A.

Something like a year before.

And further this witness saith not.

Signature, waived.

Witness claims one day's attendance, paid by the plaintiff.

Virginia Lee Co. to wit.

The foregoing depositions of
J. F. Huie & W. E. Fletcher were
duly taken, subscribed & sworn to before
me, at the time & place, & for the
purposes in the caption mentioned,
Given under my hand this the
14th day of January 1904.

Myrtle Johnson. M. P.

My commission expires
Dec 22 - 1907.

And N. L. Johnson
vs } Depositions

L & M J. P. Glass

Received by mail in
good condition and filed
January 15th 1904.
A. B. Munsey clerk

J. F. Hinkle 164
W. E. Fletcher 4

Plaintiff:

Witness claims one day's attendance, paid by the
defendant, waived.

and further claim witness said he...

Something like a year before.

Here that on the Wilson yard?

How long, probably, was that upon his own land raised?
No sir.

Did you ever examine it after it was raised?

A.
Q. V.
A.
Q. C.

Myrtle Johnson, a witness of lawful age, being duly sworn,
Deposes and says:-

Q. 1 What relation, if any, are you to the plaintiffs in
this suit?

A. I am a daughter of theirs.

Q. 2 Have you been engaged in assisting your parents in
their business?

A. I have.

Q. 3 If so, how long?

A. For several years.

Q. 4 Please state whether or not in July, 1903, L. G. Glass
transacted with you, or anyone of the defendants, any business
matter relative to the lumber dealings between him and J. P.
Glass and the plaintiffs. If so, what was it? and state
what occurred.

A. It was the 21st of July, L. G. Glass came and asked
for \$500.00 advancement on some lumber. I gave him a note
for \$510.00. We then looked over the account, he had a note
book, and we compared accounts and he said everything was
entirely satisfactory.

Q. 5 Please state whether or not you was present when the
contract dated October 10, 1902, was entered into between the
plaintiffs and defendant X, L. G. Glass, and if so, state what
occured.

A. Yes, I was present, and the contract was dictated to me
and I took it down in shorthand and wrote it on the type-
writer. Nothing was said except that in regard to the
Elkanah Young Timber.

Q. 6 State whether or not you took down in shorthand said
contract correctly, as dictated to you and afterward wrote
the same on the typewriter.

A. I did take it down and got it up correctly on the type-
writer.

Q. 7 Please state whether or not you have had a conversat-
ion with the defendant, L. G. Glass, in regard to his hauling
some of the lumber to Duffield. If so, state when and where
it was said.

A. I met Mr. Glass near Jasper Witt's just across the riv-
er in the morning. I asked him why he was hauling the lum-
ber to Duffield, and his reply was because he could get more
for it. I also asked him why he did that, when the lumber
belonged to my father, and he said we had no contract for it.
I told him we had, and he said we haven't. I told him I
knew we did, and he said, we did have one but lost it. I
told him that a contract is a contract, and that we would
stand by our part of it and expected him to do so. He still

(2)

said he could get more for it at Duffield, the C. V. Young and Dry Creek Yard. That was all the excuse he offered.

Q. 8 Do you remember anything about his ~~xxxxxxx~~ coming here and proposing settlement?

A. I met him that day and he said let's cancel all contracts and I told him I expected to live up to my father's contract. He said if I would cancel all contracts, he would pay what he owed us. He made the remark that he could get more for the lumber than my father was paying him.

CROSS-EXAMINATION.

Q. 1 You stated that the contract dated October, 10, 1902, was dictated to you. Please state who dictated it.

A. My father dictated it to me in L. G. Glass' presence.

Q. 2 Was it typewritten in the presence of Mr. Glass?

A- No sir. I did that work in my room, but he had a copy of the contract.

Q. 3 Were there any other persons present other than your self, your father and Mr. Glass at the time said contract was dictated to you?

A. I don't remember any other persons present except some who may have been moving around.

Q. 4 What month was it that you met Mr. Glass?

A. Towards the last of July.

Q. 5 Before the time your father got sick, state whether or not Mr. Glass did not ask you to let and permit Mr. Davidson instead of ~~xxxxxxx~~ Mr. Stewart inspect the lumber.

A. No sir.

Q. 6 Didn't Mr. Glass or someone ask that Mr. Davidson do the inspecting?

A. He never asked me to let Mr. Davidson to ^{do} the inspecting.

Q7 Did anyone?

A. No sir.

Q. 8 Did you not tell Mr. Davidson, yourself, that he should not have anything to do with the inspecting, and that you had Sam Stewart to do the inspecting and expected him to grade what Glasses had?

A. No, I didn't.

Q. 9 Did you know that the lumber ~~was~~ being inspected?

A. Yes sir.

Q. 10 Did you know who was doing the inspecting?

A. I supposed Sam Stewart was doing it. He was doing our Grading.

Q. 11 Did you get no information whatever that Mr. Glass was objecting to Mr. Stewart's inspecting, but was willing for

Mr. Davidson to do it?

A. Vint Woodyard told me that Glass said Sam was a little hard on a board or two, but nothing was said about Davidson. Mr. Glass had a few boards laid out, and called in a second party to settle it.

Q. 12 Who was present at the time you gave Mr. Glass the \$510.00- note?

A. I couldn't tell you.

Q. 13 Do you know his brother, W. E. Glass?

A. I have seen him, but do not know him.

Q. 14 Can you state that W- E. Glass was not present on the occasion that you gave him the \$510.00-note?

A. No, I cannot.

Q. 15 On what was the \$510.00-note advanced?

A. I don't remember.

Q. 16 Did they not ask for cash on account of lumber already delivered on your yard?

A. No, they did not. -----

And further this deponent saithnot.

Signature and formal certificate of swearing of witnesses
omitted.
James W. Orr, for Pet.

A. & N. L. Johnson

vs. J. DeLo of Mynette Johnson,

L. G. Glass & J. P. Glass.

Filed Feb' 12th 1904.

S. H. P. Keating
Clerk.

Mr. Glass had a few birds laid out, and called in a record
bird on a board of two, but nothing was said about Davidson.
Vint Woodyard told me that Glass said Sam was a little
Mr. Davidson to do it.

Copy

To J. P. & L. G. Glass,

You are hereby notified that on the 23rd day of May 1904 at the office of T. J. Asher in the town of Wassiotta, Bell County Kentucky, between the hours of 10 o'clock A. M. and Five o'clock P. M. of that day we shall proceed to take the deposition of T. J. Asher and others to be read as evidence in our behalf in a certain suit in equity depending in the Circuit Court for the county of Lee, where in we are the plaintiffs and you are the defendants; and if from any cause the taking of said depositions be not commenced, ^{or if commenced}, be not completed and concluded on that day, the taking thereof will be adjourned from day to day, at the same place, and between the same hours, until the same shall be completed.

Respectfully,

A. Whelan

Virginia, Lee County, To-wit;

I, Sam David, do solemnly swear that *R. L. Johnson* I executed the within writ on the 18 day of May 1904 by delivering a copy thereof to *a member of the family of L. G. Glass, above the age of 16 years, and giving her information of its purport, she being found at his usual place of abode, and the said L. G. Glass not being found at his usual place of abode.*

Sworn to before me in my County aforesaid on this the 23 day of May.

Sam David

Myrtle Johnson. N. P.

To J. P. & L. G. Glass,

You are hereby notified that on the ~~day~~²³ day of May 1904 at the office of T. J. Asher in the town of Wassiota, Beall County, Kentucky, between the hours of 10 o'clock A.M. and 5 o'clock P.M. of that day we shall proceed to take the depositions of T. J. Asher and others to be read as evidence in our behalf in a certain suit in equity depending in the Circuit Court for the County of Lee, where in we are the plaintiffs and you are the defendants; and if from any cause the taking of said depositions be not commenced, or if commenced, be not completed and concluded on that day, the taking thereof will be adjourned from day to day, at the same place, and between the same hours, until the same shall be completed.

Respectfully,

A. Johnson
N. E. Johnson

Virginia, Lee County, To-wit;

I, R. P. David, do solemnly swear that I executed the within writ on the ~~16~~²³ day of May 1904 by delivering a copy thereof to J. P. Glass

R. P. ^{this} David
mark

Sworn to before me in my County aforesaid on this the 23 day of May 1904

Murtle Johnson. N.P.

The deposition of T.J.Asher, taken before me, G. M. Asher
a Notary Public for the county of Bell, in the state of Kentucky,
at the office of T.J.Asher, in the town of Wasioto, in said county
and state, on the 23rd day of May, 1904, between the hours of Ten
o'clock A.M., and Five o'clock P.M., pursuant to the annexed notice
to be read as evidence in behalf of the plaintiffs in a certain
suit in equity now pending in the circuit court for Lee County
Virginia, wherein A. Johnson and N.L. Johnson are the plaintiffs and
J.P. Glass and L.G. Glass are the defendants.

Present, A. Johnson, one of the plaintiffs.

T.J.Asher, a witness of lawful age being duly sworn, deposes and
and says as follows:

Ques. (1) State your age and residence, also your occupation?
Age 56 years, Wasioto, Bell County, Ky. Manufacturer of
lumber

Ques. (2) How long have you been engaged in said business?
Sixteen or seventeen years

Ques. (3) What kind of lumber do you manufacture principally?

Principally, Poplar

Ques (4) State what $4/4$ ^{shipping cull} $5/4$, and $6/4$ poplar lumber was
worth in the rough on board cars at your mill during the
year 1903, during the months of August to November
inclusive.

The prices that we were selling for then was \$17.00
for $4/4$ ^{Cull}, and \$18.00 for 5 and $6/4$ ^{Cull}.

Ques (5) Please state what $4/4$ and $5/4$ ^{& 6/4} Common poplar was worth
in the rough on board cars at your mill during the year 1903
during the months of August to November, inclusive.

In August and September, $4/4$ common was worth \$27.00

5 and $6/4$ common poplar was worth \$29.00

Ques (6) Please state your rate of freight from Wasioto
to Cincinnati

The rate is 11 cents per cwt.

Ques (7) If the rate from Pennington Va. is 13 cents, per cwt.
to Cincinnati, what would that make $4/4$ ^{& 5/4} culls worth

F. O. B. Pennington Va.

That would make the $4/4$ culls worth \$16.44, $5/4$, \$17.44

Ques (8) Figuring on the same rate of freight what would 4, 5 and 6/4 common poplar be worth Pennington? 4/4 would be worth \$26.44, 5 and 6/4 would be worth \$28.44. These prices were fixed at Pennington were based on 2800 lbs to the 1000 ft.

Ques (9) Were the prices you have named above the prices in general received by you for poplar lumber during the time specified?

We did not sell anything for less than those prices during the time specified.

Ques (10) Supposing logs to have been yarded and lain long enough for the bark to slip before being manufactured what percent damage would you consider would be a fair estimate of damages to such logs or lumber manufactured from such logs?

I think the damage would not be less than 20 or 25%

Ques (11) What would be the condition of the sap boards manufactured from such logs?

Logs that have lain over long enough for the bark to slip off the sap would all be black and would throw it into a cull grade, and in addition to that all first and second boards which admit of a certain percent of bright sap, in edging the boards, the sap when it gets black would all have to be taken off, and it would cause considerable loss in that way.

Ques (12) Suppose logs having lain long enough before being manufactured, for the bark to slip, and are manufactured and are not edged as you speak of in your former answer what effect would that have upon the grade of such lumber? A small amount of black sap on a board, would reduce it one grade, would possibly make it a select or common, if the boards were 1s & 2ds. If reduced to a common it would be reduced two grades.

Ques (13) How many of grades of lumber do you make?

We make a grade of 1s & 2s, selects, common, culls and mill culls.

Ques (14) What was 4/4 common, 4/4 selects, and 4/4 1s & 2s worth at your mill during the year 1903, in August to November inclusive?

4/4 selects were worth \$32.00, 4/4 1s & 2s \$42.00

5 and 6/4 selects \$34.00, 1s & 2s \$44.00

Ques (15) What would that make 4/4 se lects, 4/4 1s & 2s,
and 5 and 6/4 selects, and 5 and 6/4 1s & 2s? worth
F. O. B. Pennington, if the rate is 13 cents to Cinc in
natti?

to Cincinnati,
Our rate is 11 cent s, which would make 2 cents
difference making the lumber 56 cents per thousand
feet less than the prices at Wasfoto. Making 4/4
selects \$31.44, 5 and 6/4, ^{Selects} \$33.44 per thousand,
4/4 1s & 2s, \$41.44, 5 and 6/4, ^{1s & 2s} \$43.44.

And further this deponent saitheth not.

T. J. Asher

County of Bell, State of Kentucky, to-wit:

I, G. M. Asher, a Notary Public for the county aforesaid in
the state of Kentucky, do hereby certify that the foregoing deposition
of T. J. Asher was duly taken, sworn to, and subscribed before me,
at the time and place, and for the purpose therein mentioned.

Given under my hand and official seal this 23rd day of May, 1904.

My commission as Notary expires on the 14th day of March 1906.

G. M. Asher N. P.



Fees paid by A. Johnson 2.00

*G. M. Asher No.
May 23-04*

A + H L Johnson
vs { Depositions

J. P. & L. S. Glass

Filed May 24th 1904

H. C. T. Ewing
Clerk.

The reading of this
deposition is excepted
to because notice
of the taking the
same was not
served upon L. S.
Glass in a legal
way. as will be
seen from the
return of the
party attempting
to serve it.

Sumption Bros
for Glass

Paid

December 4 - 03

C. V. Young	.50
S. Sloub	.50
Elkanah Young	.50
P. J. Earley	.25
Ozro Young	.25
J. M. Vandusen & home	.50

Jan 5 - 04

J. T. Hughes for summons served on Ben Helcher	.40
---	-----

Jan 6 - 04

J. F. Hinkle	.50
H. E. Helcher	.50
Paid by A. Johnson to parties named above.	\$ 3.90

Feb 13 C. V. Young

.50
<u>\$ 4.40</u>

This is a list
of what has been
paid by the
Plaintiffs.

60.
50.
50.
50.
50.
50.

50.

50.

50.

50.

50.

0 2 2

Amount of Stenographic work copy-
ing & Notary Public work due
me up to & including R. E. Jay-
lois deposition \$ 33.75

L. G. Glass " 2-12-04 6.50

W. E. Glass, C. V. Young }
J. P. " , M. L. Dolan }
A. Johnson, Clint Godsey }
whose depositions were taken

Feb 13-04

8.75
\$ 49.00

Stenographic, Notary
Public Work & copy-
ing.

1874-13-04

order deposited over ledger

order to bank

order to bank

order to bank

order to bank

order to bank

order to bank

order to bank

order to bank

order to bank

order to bank

order to bank

order to bank

The depositions of A. Johnson,

taken before me, J. F. Skaggs, a Justice of the Peace, for the County of Lee, pursuant to the agreement of the parties by their council at the office of E. W. Pennington in Pennington Gap, Va., on the 14th day of December, 1903 to be read as evidence in behalf of A. & N. L. Johnson in a certain suit in equity ^{pending} ~~pertaining~~ in the Circuit Court of Lee Co. Va. wherein the said A. & N. L. Johnson are the planitiffs and J. P. & L. G. Glass are the defendants. J. C. Noel council for the planitiffs and E. W. Pennington council for the defendants.

The witness, A. Johnson, being duly sworn deposes as follows;

Q. #1. State your age, residence and occupation.

A. #1. Fifty four years. Pennington Gap, Va. Lumber and general merchandise.

Q. #2. Are you one of the planitiffs in this suit?

A. #2. Yes sir.

Q. #3. Are you a member of the firm of A. & N. L. Johnson?

A. #3. Yes sir.

Q. #4. In what business is the firm of A. & N. L. Johnson engaged and how long have they been so engaged?

A. #4. General mercandise and lumber business. Ten or twelve years I think.

Q. #5. Are you acquainted with the defendants L. G. & J. P. Glass?

A. #5. Yes sir.

Q. #6. I hand you exhibit A filed with the bill in this suit and purporting to be a copy of the contract entered into between the firm of A. & N. L. Johnson and L. G. & J. P. Glass, bearing date of the third day of January 1902. You will please examine the same and state whether it is, if you know, a correct copy of said contract.

2
The foregoing ^{question is} objected to^{any} and the ^{lost} answer thereto unless it is shown that the original of said paper is either destroyed ^{and} mislaid and cannot be found. E. W. Pennington.

A. #6. I have examined the paper as requested and I think the same is a true copy.

Q. #7. State if you know where the original contract is.

A. #7. I do not know but I think the original contract was recorded in the Clerk's office.

Q. #8. State whether or not you have made diligent search for the original contract and if so state whether you were able to find it.

A. #8. At the time this suit was brought I looked through all the files but could not find it nor have I since found it.

Q. #9. I now hand you a paper purporting to be a copy test of said original contract under the signature of B. M. Morgan, Clerk, and marked "copy". Please examine same, compare it with exhibit A and state whether or not they are alike and true copies of the original contract.

A. #9. They are practically the same. I notice on the one the Justice's acknowledgement and also the County Court Clerk's certificate.

Q. #10. State whether or not L. G. & J. P. Glass have complied with the conditions and covenants of said contract and if you say they have not please state wherein they have failed to comply with the same.

A. #10. No sir they have not. They refused to deliver a good portion of the lumber. How much they have failed to deliver I am not able to state to my own knowledge.

Q. #11. State whether or not the firm of A. & N. L. Johnson made any advances of money or merchandise to the said J. P. & L. G. Glass upon any of the yards of lumber or logs mentioned in said contract and if so state how much they have advanced upon each yard as nearly as you can.

3
A. #11.

Yes sir we have. On the yards on the G. V. Young and Stout lands we have advanced, June 27th, ¹⁹⁰² \$310.00. I think that is ¹⁹⁰² January, instead of June 27th. May 22, ¹⁹⁰² Stout yard \$550.00 ninty day note, and June 13th ¹⁹⁰² Stout and C. V. Young yard \$450. July 14th ¹⁹⁰² C. V. Young yard \$700.00, July 27th ¹⁹⁰² charged for handling lumber \$5.73, on Dry Creek yard, March 7th 1903, ninty day note, #734.40, ¹⁹⁰³ April 2nd \$4.75, shoes \$1.40, lantern .90 total \$7.05. April 15th, ¹⁹⁰³ I think it is, ninty day note \$275. June 9th sewing machine needles five cents, June 24th hay #5.35, August 3rd whip by J. Deboe .65, August 24th gumming saw .20, August 19th 1902 Edwards yard, ninty day note \$400.00 January or June, I do not know which, one ladies skirt \$3.75, September 15th. in the year 1903, trunk \$2.50. That is all on that yard I think. February 20th 1902, ninty day note on Lockert yard \$500.00. I have charged against that yard, handling lumber \$4.40. November 4th, ¹⁹⁰² check \$280.92, interest \$7.25. On the Horton yard April 1st 1902, ninty day note ¹⁹⁰² \$200.00, June 1st, ninty day note ¹⁹⁰³ \$125.00, March 23rd interest on Horton yard \$14.34, shoes \$4.50, check \$141.80, June the ¹⁹⁰³ 13th check \$216.31.

Q. #12.

State whether or not you have paid L. G. & J. P. Glass or either of them any money, merchandise or other things of value on any other timber manufactured by them during the existence of the contract sued on in this suit and if so state on what yard the advances were made, the amounts advanced and when.

A. #12.

\$400.

Yes sir. Advanced on Elkanah Young yard, October 10th 1902 \$400.00, December 18th \$150.00. These were checks, and June 2nd, ninty day note \$306., June 11th wagon L. G. Glass \$57.00 W. E. Glass wagon \$47.00, June 15th hay L. G. Glass \$4.80, W. E. Glass \$1.59, king bolt W. E. Glass .25, June 17th order to Burke & Brown \$2.50 (17) coats \$5.75, (18) hay L. G. Glass \$2.67, (18) hay, W. E. Glass \$1.74, July 21st ninty day note \$510.00, (28) saw \$3.15 L. G. Glass file.15. August 4th 600'

ceiling L. G. Glass \$6.00. Now I have charged on L. G. & J. P. Glass account November 4th belt pulley, shafts, collars, etc. \$26.95 which I think should go to this Elkanah Young yard and Hay \$1.87. That is all I think to that yard. July 26, 1902 check Hinkle & Banner yard \$300.00, December 18th check \$150.00, December 9th we have three sacks salt \$2.70 and one saw \$2.50 whip .75. August 20th check \$150.00

Q. #13. You will please state how much lumber you have received from each of the yards mentioned by you, their grades, and prices therefor.

A. #13. July 27, 1902 received from Stout yard

6209'	1&2	poplar at	\$23.00	\$142.81
18786'	com	.....	16.00	300.58
13201'	cull	.....	9.00	118.81
Aug 21st				
1355'	1&2	.....	23.00	31.17
5496'	com	.....	16.00	87.94
3364'	cull	.....	9.00	30.28
1389'	1&2	.....	23.00	31.94
8354'	com	.....	16.00	133.66
5437'	cull	.....	9.00	48.33
7532'	1&2	.....	23.00	173.23
24563'	com	.....	16.00	393.00
16074'	cull	.....	9.00	144.66

That is the credits on that yard I believe. On the Lockert yard August 19th.

1930'	1&2	poplar at	\$23.00	\$44.39
11803'	com	.....	16.00	188.03
7779'	cull	.....	9.00	70.01
3995'	lynn & buckeye	12.00		47.94

November 4th by 4% interest on \$500.00 (\$5.00.) Oct. 8th

1654'	1&2 oak	\$20.00	\$33.08
2905'	com ...	12.00	34.86
3578'	cull...	7.00	25.05
938'	1&2 poplar	23.00	21.57
5763'	com	16.00	92.37
4163'	cull	9.00	37.46
15701'	lynn & buckeye	12.00	188.41

Hinkle and Banner yard next. August 21st.

1039'	1&2	poplar at	25.00	\$25.97
8924'	com	.....	17.00	151.71
7892'	cull	.....	9.00	71.03
3457'	5/4 & 8/4 1&2	poplar	\$27.00	93.34
4725'	... ..	com	18.00	85.05
727'	... ..	cull	10.00	7.27

January 17th 1903

✓ 378' 1&2 poplar at	\$25.00	\$9.45	
✓ 5194' com	17.00	88.30	
✓ 6748' cull	9.00	60.73	15' 8.48

March 26th. 1903.

✓ 156' 1&2 oak	22.00	3.43	
✓ 647' com ...	13.00	8.41	
✓ 2711' cull ...	8.00	21.68	33.52

Edwards yard November 24th 1903

734' 1&2 poplar at	23.00	16.88	
11721' com	16.00	190.54	
16288' cull	9.00	146.60	
9' 1&2 chestnut	20.00	.18	
263' com	12.00	3.16	
452' cull	7.00	3.10	
41' 1&2 oak	20.00	.82	
412' com ...	12.00	4.94	
265' cull ...	7.00	1.81	368.03

Horton yard March 23rd. 1903

✓ 1491' 1&2 poplar at	23.00	34.29	
✓ 1129' com	16.00	176.46	
✓ 5748' cull	9.00	51.73	
✓ 13652' lynn	12.00	163.82	
✓ 715' 1&2 oak	20.00	14.30	
✓ 1994' com ...	12.00	23.92	
✓ 1554' cull ...	7.00	10.80	
one load lumber		30.00	
interest		3.25	485.57

June 13th 1903.

✓ 1012' 1&2 oak	20.00	20.24	
✓ 3033' com ...	12.00	36.39	
✓ 1857' cull....	7.00	12.99	
✓ 658' 1&2 poplar	23.00	15.13	
✓ 4023' com	16.00	64.36	
✓ 3362' cull	9.00	30.25	
✓ 2246' lynn	12.00	26.95	
one lot gum lumber		10.00	216.31

Elkanah Young yard May 29th. 1903.

✓ 4307' 1&2 poplar	28.00	120.59	
✓ 10470' com	19.00	198.93	
✓ 16612' cull	10.00	166.12	485.64

June 10th

✓ 862' 1&2 poplar	28.00	\$24.13	
✓ 2572' com	19.00	48.86	
✓ 4271' cull	10.00	42.71	
discount		6.00	117.70

Elkanah Young yard July 1st. 1903.

✓ 4128' 1&2 poplar	28.00	115.58	
✓ 8903' com	19.00	169.15	
✓ 6802' cull	10.00	68.02	352.75

July 28th to August 18th 1903.

✓ 9000' 1&2 poplar	\$28.00	\$252.16
✓ 19625' com	19.00	372.87
✓ 11854' cull	10.00	118.54

743.57

So much of the answer ^{to} of the foregoing as pertains to the Hinkle and Banner and Elkanah Young yard is objected too because the same was not manufactured by the defendants in this cause but was manufactured, the Hinkle and Banner yard, by L. G. Glass alone and under a separate and independent contract with the said plaintiffs and the Elkanah Young yard manufactured by L. G. & W. E. Glass also under a separate and independent contract with the said plaintiffs, and this being the case all the foregoing answer that ^{he} maintains to the said yards is irrelevant and immaterial. E. W. Pennington.

The further taking of these depositions, by agreement of all parties, is hereby postponed until Monday morning December 28th 1903 at the same place mentioned in the caption.

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The further taking of this deposition is resumed pursuant to agreement, at the office of E. W. Pennington, Pennington Gap, Va. Present, J. C. Noel, council for the plaintiffs and E. W. Pennington, council for the defendants.

Deposition of A. Johnson resumed.

Q. 14. In your answer to questions #11 & #12 in your examination on the 14th of December you ~~enumerated~~ payments, ^{and} advancements that you had made to J. P. & L. G. Glass on the different yards specifically mentioned in your contract with them and upon other yards not so specifically mentioned in said contract. you will further state whether there are any other advancements that you have made to them or either of them during the existence of this contract that you have not charged to any yard in particular. If so state what those advancements were, amount, and why you did not charge them up to any particular yard or yards.

A. #14. Yes sir, we have \$93.56 that is not charged to any specified yard for the reason that we did not know what yard they properly belonged. First, January 19th 1901 balance on watch \$8.75 This was gotten by L. G. Glass. February 8th 1901 gloves .75 shoes .50. April 9 1901 iron .10. January 8th 1902 chain \$1.65, 24th banjo \$4.75, grip .45, clock .75. August 2nd bacon \$3.75, October 9th lock .90, November 4th 1902 moulding \$1.89, siding \$30.15, ceiling \$9.35, ceiling \$2.70, ceiling \$19.92, ceiling \$4.40, three bags salt \$2.70.

Q. #15. In answer to questions #11 & #12 & #14 in which you have enumerated the payments made L. G. & J. P. Glass state whether or not you have taken these payments from the books which you have kept in the daily transaction of your business of the firm of A. & N. L. Johnson.

The foregoing question is objected too because leading.
E. W. Pennington.

A. #15. Yes Sir.

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Q. #16. State whether or not the lumber enumerated by you in answer to question #13 ~~is~~ the lumber received from L. G. & J. P. Glass has been taken from the books kept in the ~~daily~~ transaction of your business.

The foregoing question is objected too because leading.
E. W. Pennington.

A. #16. Yes sir.

Q. #17. Give the number of the books and pages from which those enumerations^{of} payments and advances to the defendants will be found and also the books and pages in which are found the entries of the lumber received from the defendants upon your contract with them.

A. #17. Book #10 page #233, book #11 page #1, page #57, page #97, page ~~#155~~, *and book 12 page 406* page #119. I think that is all.

Q. #18. State whether or not at the instigation^{to} of this suit that you had information that the defendants, L. G. & J. P. Glass were not going to deliver any more lumber upon your contract with them and that they were disposing of it to other parties and if so, state how long it was before the instigation^{to} of this suit before you received the information.

A. #18. I had information that L. G. Glass was selling ~~his~~ part of the lumber to other parties and did not intend to deliver any more upon his contract with us and I received that information the day the suit was ~~xxxxxx~~ instigated^{to}.

Q. #19. At the time of the instigation^{to} of this suit and before, during the year 1903 and the year 1902, if said lumber had been delivered according to the ~~xxxxxxx~~ terms of the contract what could you have realized for said lumber by the thousand, taking the different grades.

That may have after the proposed of the same nature
This and all other questions^{to} are objected too because the contract sued on dated January 3rd 1902 only gives a lien to the complainants upon the lumber manufactured by them to the

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extent of the advancements made on the same; and if the defendants repay to the complainants what has been advanced by them ^{when with interest} ~~it is insured~~ ^{no other} that they can sustain ~~in their damages and~~ ^{in this suit} ~~losses~~. This court does not have jurisdiction to ascertain the damages for the breach of said contract if there was an unjustifiable breach of the same, which is denied. And because the plaintiffs do not allege any specified sum of damages in their bill. They do not say in their bill that they are damaged one dollar or a million by reason of the alleged breach. And because lumber having a market value the damages could only be such as were its reasonable market price, and not what the witness in some way or other could have realized out of it. E. W. Pennington.

Q. #19. Prior to September 15th 1903 we have been getting net \$40.00 for 1&2, for common \$30.00 and about \$20.00 for shipping culls this ~~is~~ on poplar lumber. I think we could have realized \$20.00 on the linn, that is log run and about the same on the oak. Since September 15th lumber has been up until right recently, but to within the last sixty days we could have gotten a little more than that for it from September 15th to the first of November. I might state that I did sell some 1&2 ~~th~~ this fall sometime, I do not remember the exact date, for \$55. delivered on a twenty cent rate which would make it \$49.00 here.

Q. #20. If the preceeding answer does not include the market price of the different grades of lumber at the time specified please state, if you know, what the market price of lumber was at this date, what it could have been sold for upon the market for the different kinds of lumber called for in the contract sued upon.

A. #20. I think that the market price of the lumber mentioned in said contract is the same as prices mentioned in my preceeding answer. I think those are minimum prices.

Q. #21. State if you can, how much the plaintiffs in this suit have

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been damaged by the failure of the defendants to comply with the terms of their contract and if you cannot so state give the reason why you cannot.

This question and answer thereto is objected too for the reason above stated. E. W. Pennington.

A. #21. I cannot state exactly because I do not know how much lumber, only from heresay, that they have hauled away that we should have received.

Q. #22. State whether you know the different grades and the amounts of each, of the lumber they have failed to deliver that you should have received under this contract.

A. #22. No sir I do not know.

Q. #23. If you have any orders for lumber which show the market price or shows the market price at Pennington Gap, at the time of the breach of the contract mentioned in this suit, or there about, showing what you could have sold this lumber for if they should have delivered it, you will please file same, marked "orders" and explain how much you could have cleared on each grade of the lumber specified in the contract.

The foregoing question and any answer thereto is objected too because if the plaintiffs are intending to recover on account of the breach of contract in this case they would only be entitled to recover the difference between the agreed purchase price and the market price of the same at point mentioned in said contract. E. W. Pennington. *This is the information*

men -
A. #23. I have several orders which I file marked as requested. One order George Biederwolf November 24th 1903, Monticello, Ind. ~~and~~ which is mostly for selects S2S. Now the selects we get from the common grade of lumber as we buy it in the rough. The rate is about twenty cents per hundred pounds. The prices on what lumber was sold in this order run from \$38.00 to \$45.00 for select grade and figures \$4.40 for freight, \$1.50 per thousand

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for surfacing would leave us \$32.10 net and on \$42.00 grade would leave \$36.10 and on \$45.00 grade would leave \$39.10. The 1&2 sold in this order were sold at \$59.00 which would leave us net \$54.10. There is some select bevel siding at \$25.50, we figure a better profit on bevel siding than any other grade, in fact that is our speciality. We make bevel siding principally from culls and common. We go through the stock and take out all the boards that would work well in bevel siding first and the pieces that will rip 5 3/4" wide with an inch of sap on one edge will make #1 siding and we frequently find such strips on cull boards and more frequently in common grade. We dress the strips four sides and resaw them making them 3/16" thick on the thin edge and 1/2" thick on the thick edge, making 2' out of one. And by so doing we continually raise the grade. There might be a knot on one side of the strip when in the rough that would class it as a cull, when it is worked and resawed we may have one cull piece and one clear piece and frequently do. The more pieces we cut the ^{stock} ~~work~~ into, the higher the grade. We have an order here from Gilliam Lumber Co. October 14th 1903. The selects in this order are sold at \$38.50, that is one inch selects which would leave us net \$32.60 the 8/4 selects are sold at \$41.50, which would leave us net \$35.60, the 1x5 selects are sold for \$39.50 which would leave us net \$33.50. The #1 siding sold at \$25.75, 5" ^{select} #1 at \$24.75 6" select \$22.00 and the 5" select at \$21.00. That is all the bevel siding. We have an order from Pulse & Porter October 2nd. 1903 10 000' 6" #1 bevel siding at \$25.50, 25 000' 6" #2 bevel siding at \$21.50, 5000' #1C bevel siding at \$17.50, 1000' 5/4 select at \$40.00, 1000' 6/4 select at \$40.00 which would net us \$34.10. We have various other orders, one B. E. Gregory 4/4 selects were sold at \$37.00 which would net us \$31.10, 5/4 & 6/4 selects were sold at \$39.00 which would net us \$33.10, 6"

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#1 bevel siding at \$25.50, 6" #2 at \$21.50, and we have a settlement, which we herewith file, which coincides with our invoice. We have an order from Pinnell & Dulin Lumber Co. shipped the 24th of November 1903, 4/4 selects at \$37.00 which net us \$31.10, 5/4 & 6/4 selects at \$39.00 which net \$33.10 6" #1 bevel siding at \$24.00 and 6" select at \$21.00. We also have an order from Carter, Lee & Co., Indianapolis, shipped October 20th 1903. 4/4 1&2 was sold at \$46.00 which would net us \$40.10, 5/4 1&2 was sold at \$49.00 which would net us \$43.10 2000' 10/4 at \$55.00 which would net us \$49.10, 2000' 8/4 at \$50.00 which would net us \$44.00. I have several other orders which I ~~will~~ filed, along the same line.

The foregoing answer is objected too because it relates to the products of lumber, that is dressed and worked lumber, and not to lumber in the rough which was ~~xxx~~ agreed to be sold by the defendants to the plaintiffs and because the prices spoken of are prices at some other point than at Pennington Gap, Va. E. W. Pennington.

Q. #24. If about the time of the instigation^{the} of this suit or since you have tried to buy any lumber on the market in the rough please state from whom and the prices asked you for the same. That

is, persons in the lumber business. *This question is objected to because the question does not relate to market value.*

A. #24. I have asked the Virginia Coal & Iron Co. for prices..My recollection is that they asked \$14. or \$15.00 for shipping culls and \$27.00 to \$30.00 for common and \$40.00 for #1&2 on board cars at their mill in Wise County Va. Freight from there would be about one dollar per thousand.

CROSS EXAMINATION.

Q. #1 *there is a market for* State whether rough lumber #1&2, common, and shipping culls in the town of Pennington Gap, Va. ~~has the market value.~~

A. #1. Yes sir.

Q. #2. Is that market value easy to ^{be}ascertain^{ed} for such lumber?

A. #2. I think so.

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Q. #3. What is the highest price that you had paid for #1&2, common and shipping cull poplar lumber in the town of Pennington Gap Va. on your yards in said town on the first day of January 1903

A. #3. The highest price that I remember of having paid was to Glass on the Hinkle and Banner contract, \$9.00, \$17.00, & \$25.00, there was a contract in force at that time but no lumber had been delivered on it, ^{than above prices} at a higher price, but I do not remember the price.

Q. #4. Approximately how much higher in price?

A. #4. Well I think there was a price with them at \$10.00, \$20.00 & \$30.00 and there was one at \$10.00, \$19.00 & \$28.00.

Q. #5. What was the highest price that you remember which you gave for any rough poplar lumber delivered in Pennington Gap, on your mill yard along about the first of September 1903?

A. #5. I bought some little lots at \$10.00, \$20.00 & \$30.00.

Q. #6. Are not the prices above fixed by you about the prevailing prices at the time spoken of in said town?

A. #6. I do not know of any body else buying lumber but us unless it was Dodson and I do not know what he is paying. And so far as I know the above is about the prevailing prices, for such lumber.

Q. #7. You have here to fore in your examination in chief given a detailed statement of the lumber delivered to your place, state from what book or books or papers you got the lumber credited to the account of the defendants.

A. #7. Books #10 & #11 ⁷¹² referred too in my examination in chief.

Q. #8. Are the entries made in such books original entries or are they transferred from some other book or papers?

A. #8. I would call them original entries. They are taken from tally sheets.

Q. #9. Who made the entries referred too by you, if you know?

A. #9. I made the principal part of them myself. Myrtle made some of them. I have not noticed particularly whether any body else or not.

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Q. #10. Where are the tally sheets of the lumber, if you know, for which you have given said defendants credit?

A. #10. I have them with the exception of two lots. There is an entry of July first and May 29th, which are credited to the Elkanah Young yard.

Q. #11. Have you credited any lumber whatever as having been delivered to you from the C. V. Young yard? If so how much?

A. #11. Yes sir, as I understand it. I will say that the C. V. Young yard is the same as the Stout yard which was ~~xxxxxx~~ called the Stout yard when the lumber was received. All we know of it was what Glass told us about it.

Q. #12. Have you given said defendants credit for all the lumber delivered to you by them?

A. #12. Yes sir.

Q. #13. Why do you say so?

A. #13. I know that I have up to ^{June 24th} ~~July~~ to my own knowledge and I have conferred with others and if there are any omissions it is since the ^{24th} ~~first~~ day of ^{June} ~~July~~ 1903.

Q. #14. Who measured, and inspected, and tallied the lumber for which you have given the defendants credit?

A. #14. I measured it up to July 1903 myself. I donot know who did the residue of the work.

Q. #15. Has your co-complainant, Mrs. N. L. Johnson told you who did the measuring, inspecting and tallying of the lumber after the first day of July 1903?

A. #15. No sir. She was not here. She was with me.

Q. #16. Has any one told you who did it? If so who told you?

A. #16. Yes sir, Myrtle, Mr. Davidson, Sam Stewart, and C. C. Douglas.

Q. #17. Upon the information received from these parties have you given any credit for lumber received by you on or ^{since} ~~before~~ July first 1903?

A. #17. The account shows credit ^{on + after that date} ~~on~~

Q. #18. Who did the measuring, inspecting and tallying of the lumber

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delivered to you on and after the first of July 1903?

A. #18. Sam Stewart.

Q. #19. Do you know anything of the Hardwood Manufacturers Association of the United States inspection of hardwood, poplar etc?

A. #19. Yes sir.

The foregoing is objected too because immaterial and irrelevant. J. C. Noel.

Q. #20. State whether the rules given by said Association for inspection are standard rules of lumber people in this country.

The foregoing question is objected too because it is immaterial and irrelevant. J. C. Noel.

A. #20. No sir. That Association was formed since this contract was made.

Q. #21. Why do you say that it was formed since this contract was made?

A. #21. If I am not very badly mistaken it was formed April 1902 at Lexington, Ky.

Q. #22. What were the difference in the inspection of lumbers previous to the formation of the said association and at the time of the formation of said Association, if you know.

A. #22. I do not think these standard rules make any difference.

Q. #23. I will ask you to take this little book and on page twenty see if you do not find these words "seconds should be 7" and over wide".

The foregoing question and answer there to is objected too because there is no evidence in this case showing or tending to show that the rules of inspection laid down in the book handed the witness are the same as the rules by which lumber is inspected in this country or that they are standard rules of inspection for this or any other country. J. C. Noel.

A. #23. Yes sir.

Q. #24. Is it not a fact that you have observed that every person in

the county tallying any lumber and in the inspection of the same do not handle and use a copy of the book I hand you?

- A. #24. I do not think they do. I do not know of ~~an~~ a single one that uses it.
- Q. #25. How did you become acquainted with the said Association and its rules for inspection?
- A. #25. I received notice from the Secretary of the Association with a copy of the book.
- Q. #26. Do you not know belong to said Association yourself?
- A. #26. Yes sir.
- Q. # 27. In the inspection of lumber did you not use said Association rules for inspection at this time?
- A. #27. We do in dressed lumber, the product of lumber you called it while ago, where we can.
- Q. #28. I will ask you to examine your tally sheets and state how ~~m~~ much, if any, in the inspection of the lumber delivered to you by the defendants, you have ~~called~~ ^{called} #1&2, 7" & 6" in width.
- A. #28 I could not tell. You cannot tell how many feet in a 7" board or 6" unless you know the length of it.
- Q. #29. How many 6" and 7" boards in the tally sheets you have in your possession have you ~~given~~ graded and inspected as one or two?
- A. #29. The tally sheets show the number of feet in a board, they never show the length and width.
- Q. #30. Do you remember of giving a single board while you were tallying 6" or 7" #1 or 2?
- A. #30. 6" clear boards I gave them #1 for where they were sawed 6" and multiples of 6".
- Q. #31. Have you a recollection, an independent recollection of giving a 6" board ^{if} ~~what~~ its ~~condition~~ ^{clear} was, as one or two?
- A. #31. Yes sir I have. This kind of boards are precious few.
- Q. #32. How many of such boards do you remember then?
- A. #32. Not very many.

- Q. #33. How many of such boards do you remember?
- A. #33. I could not state any number.
- Q. #34. Do you know that you gave and inspected as #1&2 for a single ^{clear} 6" board?
- A. #34. Yes sir.
- Q. #35. Was any of this lumber ever inspected in the presence of ^L L. G. Glass, one of the defendants?
- A. #35. Yes sir, most of it was.
- Q. #36. Was any of this lumber inspected in the presence of J. P. Glass the other defendant in this suit?
- A. #36. Yes sir.
- Q. #37. Is it not a fact that L. G. Glass insisted on you inspecting 6" clear boards as #1 or 2 and did you not absolutely refuse to do so.
- A. #37. No sir.
- Q. #38. Did you not on one occasion while you were inspecting some of said lumber ~~for the~~ in the presence of J. P. Glass, one of the defendants, after being insisted upon to give an inspection of #1 or 2 for clear boards and you refusing to do so, remember that he told you that if you were going to steal the lumber that he would go away and not see it done with his own eyes?, or words to that effect.
- A. #38. There was never ^{any} such conversation passed. Mr. J. P. Glass and I got along very nicely and more over he expressed himself as extremely well satisfied right on the lumber pile, with the grade he was getting.
- Q. #39. Take your book and look on the account of J. P. & L. G. Glass the defendants and state what it shows as the balance due you.
- A. #39. ^{\$1995.50} ~~\$1995.50~~ if I have made no error in calculation.
- Q. #40. Will ask you to take book #11 and on page #57 which shows the end of the account of L. G. & J. P. Glass that your book itself shows an amount due you of \$1193.28 or about that much.
- A. #40. No sir it does not. It shows \$2173.76.

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Q. #41. Please state whether or not you have given L. G. & J. P. Glass any credit upon the account sued upon, for the Edwards lumber.

A. #41. Yes sir.

Q. #42. Please take book #11, page #57 and tell me where it is upon said book.

A. #42. I think it is on the other book. I have given them credit for it in our statement of the account in ^{my} the deposition ⁱⁿ to the chief. We have ^{a higher} ~~another~~ book than this and I think it is ^{referred} ~~ended~~ on that book.

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Cross examination of witness, A. Johnson, resumed on Tuesday, Dec. 29, 1903, at the same place as mentioned in the caption of this deposition. Present, the same parties as upon yesterday.

Q. 43 At Wise Court House on or about the 18th day of Sept., 1903, before one C. J. Edward, Notary Public for said county, did you not make an affidavit in defense of the motion made before the judge of the circuit court of Lee County and default the injunction in this suit, and with your affidavit file a statement or statements in writing, purporting to show the exact copy of the account on your books in respect to the accounts of L. G. Glass and L. G. & J. P. Glass as partners, and L. G. & W. E. Glass as partners and J. P. Glass individually. If you say you did and have that paper before you, please file them as a part of the answer to this question.

Objection.--The foregoing question and any answer thereto is objected to because the affidavit and statement in writing are filed with the papers in this case, and they show for themselves what the witness stated in the said affidavit and statement. J. C. Noel.

A. Yes sir, I did make such affidavit and have the copies of the accounts asked for in my hands and herewith file the same as a part of my answer as requested "marked copies of accounts".

Q. 44. Are not the articles spoken ^{of} by you in your deposition in chief to wit: Watch, \$8.15; Gloves 75cts., shoes 50 cts and iron 10 dts, charged to the account of these parties and the date antedating the date of their contract with you, and as a matter of fact, were not said articles bought from you by L. G. Glass before contract sued on was made with you by said defendants.

A. Yes Sir.

Q. 45. Please state if on or about the 26th or 27th of July, 1902, you did not enter into a contract with said L. G. Glass individually for the lumber known as in this case as the Hinkle & Banner Yard.

A. Yes sir.

Q. 46. Was this contract in writing? if so have you got it in your possession or know where it is?

A. Yes sir.

Q. 47. Please file the same.

A. I will file the same marked "Contract with L. G. Glass" but reserve the right to withdraw the same from the papers in this case, if I so desire after the termination of this suit.

Q. 48. Take the account of J. P. Glass & L. G. Glass, and upon the Dr. side thereof see if you find charged to them \$300.00 as an advancement upon the Hinkle & Banner Yard. The same mentioned in the contract which you have just filed--in the contract with L. G. Glass.

A. Yes sir.

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- Q. 49. Please examine said account further and see if said sum of money is not charged to said L. G. & J.P. Glass twice.
- A. It is charged first, on July 26th and again Oct. 17th as July the 27th. This makes twice but further on in the Cr. I have given the said parties credits for one of these \$300.00
- Q. 50. Then, so far as the said \$300.00 is concerned, is not it an error charged against these defendants?
- A. I do not think so.
- Q. 51. Why is it not an error against these parties.
- A. Because each party has credit for each amount of lumber.
- Q. 52. On the individual account of L. G. Glass, do you credit him at all with any of the Hinkle & Banner set of lumber? i. e., the lumber mentioned in the contract dated July 26, 1902.
- A. No.
- Q. 53. State whether you have on your books an account against L. G. Glass individually.
- A. We have an account known as the "Dry Creek Yard."
- Q. 54. Has the Hinkle & Banner stuff, mentioned in contract of July 26th, 1902, been delivered to you?
- A. I know nothing of it except what L. G. Glass represented to be from the Hinkle & Banner Yard, or according to the representation given to me by L.G. Glass.
- Q. 55. Have you not credited the Hinkle & Banner lumber to the partnership account of J. P. & L. G. Glass?
- A. Yes sir.
- Q. 56. Then, is not said credit an error in your account with J. P. & L. G. Glass to that extent?
- A. I do not think it is.
- Q. 57. In answer to question 14 of your examination in chief, you say you have charged to these defendants on their partnership account some bacon, clock and the like, moulding, siding, casing and salt? Referring to these articles gotten from you already by L. G. Glass, and should have been charged to his account.
- A. L. G. Glass had no individual account as yet. I tried to get him to run them individually, but could not get him to do so. All I know of these credits, was what they told me about them.
- Q. 58. On and before the day of the contract, did not L. G. Glass have an individual account unsettled?
- A. Yes sir. He had a credit ~~unsettled~~ agreed to settle it at the time of the contract was made out of the lumber we were getting.
- Q. 59. On or about the tenth day of Oct., 1902, did you not make another contract with L. G. & W. E. Glass for the set or yard of lumber known as the Elkanah Young Yard?
- A. Yes sir.

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Q. 60. Was that contract in writing^X signed by L. G. Glass alone?

A. Yes sir, *but it was only signed by L. G. Glass*

Q. 61 Have you that contract in your possession?

A. Yes Sir.

62. Q If so, will you please file the same herewith as a part of your answer^X to this question marked "L. G. & W. E. Glass"?

A. I have the contract, and file the same marked as the question.

Q. 63 I notice on the account of L. G. & J. P. Glass, you have charged them with a belt, pulley, shaft and collar at \$26.95. Was not this stuff bought from you, if bought at all, by L. G. & W. E. Glass?

A. L. G. Glass is the man that had me to order it.

Q. 64. Do you ^{not} know it to be a fact that it was bought by him to be used in or about the manufacturing of the Eljanah Young Timber?

A. No sir, I do not.

Q. 65. Did he not say or inform you at the time that the same was bought, if bought at all, by him *for whom it was bought*

A. No sir.

Q. 66. Did you have in stock said ^{shaft} pulley, belt and collar, or was the same ordered? *on a special order*

A. It was ordered.

Q. 67. In charging up said items, state whether you charged any per cent. upon the original cost price and transportation charges. If so, how much?

Objection. The foregoing question is objected to because immaterial to the issue in this suit.---- J. C. Noel.

A. I don't remember, but presume that we charged a profit.

Q. 68. Were the belt, pulley, shaft and collar all delivered, and received by L. G. Glass & J. P. Glass?

A. They were all pointed out to L. G. Glass. The pulley was cracked, and I agreed to have it fixed. I suppose he got it. I haven't seen it since.

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- Q. 69. Did you have it fixed?
- A. Could not state whether I did, now or not.
- Q. 870 To what shop did you tell him to take it?
- A. To Carnes' shop.
- Q. 71. Do you know of your own knowledge that he did take it?
- A. No sir.
- Q. 72. Could the shaft and collar have been used with ^{out} that pulley or someone like it?
- A. It could have been used with the same style of pulley.
- Q. 73. Could they have been used in or about the manufacturing of lumber without that pulley or some other that would have fitted them?
- A. No sir.
- Q. 74. How much, and what size belting was this that you have *charged*.
- A. Don't remember.
- Q. 75. Is it not a fact that the only ^{part of this} charge for stuff that L. G. Glass got, was ~~a pulley~~ *was the belt*
- A. I don't know what he got.
- Q. 76. On the account of L. G. & J. P. Glass, I notice you have charged a check for \$150.00 August, 21, ~~Q&A~~ 1902. Have you ~~charged~~ that check? If so please file the same.
- A. I have a check of August 20th, 1902, payable to L. G. Glass. I herewith file the same marked "check".
- Q. 727 Said check was given for payment on that lumber?
- A. As advancement on Hinkle & Banner Yard.
- Q. 78. Then, should not said check have been charged to L. G. Glass ^{the individual account} instead of ^{to} L. G. & J. P. Glass, the defendants of this suit?
- A. We had no account with L. G. Glass at that time.
- Q. 79. I notice on the account of L. G. & J. P. Glass, December 18, 1902, you have charged another check for \$150.00. Have you that check. If so, please file the same.
- A. Yes sir, I herewith file the same, marked "check"
- Q. 80. For what was this last mentioned check given as payment? if for anything?
- A. Hinkle & Banner Yard.
- Q. X81 Then, should not this last mentioned check have been charged to L. G. Glass alone instead of to the Partners?
- A. I don't think it should.
- Q. 82. On Dec. 18, 1902, I notice, you have charged to the account of L. G. Glass & W. E. Glass the check for \$150.00. Have you that check? if so, please file the same.
- A. Yes sir, I have. ^{It was an} advancement on the Elkanah Young Yard and herewith file the same as requested.
- Q. 83. On July, 27, 1902, and on August 19, 1903, I notice you have charged ^{to} L. G. & J. P. Glass the sum of \$5.73 and \$4.00 for handling lumber. Tell what kind of handling lumber those

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charges are for.

A. Expense incurred in handling and grading it.

Q. 84. Does your contract dated Jan. 3, 1902, with said parties provide or specify that said defendants should pay for handling the lumber mentioned in their contract that might be delivered to you *while grading & inspecting the same to you.*

A. X I think it does, inferentially but not specifically.

Q. 85. I ask if on one occasion at your store, L. G. Glass & J. P. Glass or one of them, on seeing said charges, upon your books, did not call your attention to the fact that they were erroneous charges, and did you not then and there state to them and promise to give them credit for said two charges?

A. We had some talk about it, but I did not promise to give credit. *for them* I did promise, if they would put the lumber on the yard where we requested them to put it, we would handle the lumber hereafter at our own expense.

Q. 86. What is the relationship of yourself and W. L. Johnson, if any?

A. She is my wife.

Q. 87. Were you and she husband and wife at the institution of this suit and the day of the *making of the* contract ~~X~~ sued upon?

A. Yes sir.

Q. *88* Was any of the lumber delivered to you by the said defendants or either of them under said contract 16' *feet* long ~~or~~ longer?

A. My recollection is that very little of it was 16' *feet* in length, but it ran 12 and 14' *mostly.*

Q. 89. What *pieces cut of* 16' lengths *on* (there were) being cut from Lockhart & Horton Yard?

A. I don't know.

Q. 90. State whether you saw the logs, out of which the lumber was sawed, that was delivered to you, before they were sawed into lumber, *on any of them*

A. I did not.

Q. 91. In *the* measurement of logs by the rule known as the Lumberman's Favorite Rule, if you are acquainted with that rule, state whether logs measured by said rule will hold out in the board measurement, if you know *when sawed.*

Q. It depends a good deal on how they are sawed. If careful in measurement and making allowances for defects and careful sawing, they ought to hold out.

Q. 92. State whether any of the lumber delivered at your ~~xxxx~~ mill in Pennington Gap by the defendants was *lost* stolen, burned or misplaced before it was graded and measured *& taken up?*

O. *lost* The foregoing question or any answer thereto is objected to because immaterial and irrelevant, and because, if stolen or burned before measurement, same was a loss of the defendants and no responsibility rests on the part of the plaintiff's by reason of such loss or destruction.

--J. C. Noel.

X
W
Q. 93.

Supposing more or less of said lumber delivered to your mill yards in Pennington Gap, had been burned, misplaced or stolen, as you understand your contract with said parties, on whom should the loss fall?

X O. The foregoing question or any answer thereto is objected to because the contract is in writing and shows for itself and it is the ~~XXXXXX~~ of the court to interpret the contract and not the province of the witness. -- J. C. Noel.

A. I should think it is the defendant's loss.

Q. 94. Supposing the defendant can show by competent evidence that some of the lumber mentioned in the contract and upon ^{at your mill in Pennington Gap, Va} has been lost, destroyed, stolen or misplaced before the same was measured or inspected by you or your agents, are you willing to pay the defendants for the same or for such loss?

Q. The foregoing question or any answer thereto is objected to because for reasons stated above, and for the fact that the question is purely hypothetical and no evidence so far has been produced showing that any such lumber has been lost or stolen.-----J. C. Noel.

a, no.
Q. 95. State whether at the various places where the lumber was manufactured it was lost, stolen, destroyed or misplaced.

O. The foregoing question or any answer thereto is objected to ~~to~~ for reason stated in the foregoing objection.
--J.C.Noel.

A. I do not know.

Q. 96. Supposing it can be shown by competent evidence that a portion of said lumber was lost, destroyed, stolen or misplaced at the yard where sawed, on whom do you contend should the loss fall?

O. The foregoing question or any answer thereto is objected to for the reason stated above.

---J.C.Noel.

A. On the defendant.

Q. 97. At the time of the institution of this suit, please state whether there was any of the lumber mentioned in said contract on your mill-yards in Pennington Gap, that had not been measured and inspected by you.

A. Yes sir.

Q. 98. If so, what lumber was, if you know?

A. There was some from the Edward Yard.

Q. 99. Have you since the institution of this suit measured and inspected the lumber mentioned in the last preceding question?

A. Yes sir.

Q. 100. Who measured and inspected the Edward Yard, if you know?

A. I measured the poplar that was delivered. Sam Stewart measured what little oak and chestnut there was.

Q. 101. About when was the last Edward Lumber measured and inspected by you?

A. Nov. 24, 1903.

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Q. 102.

Were any of the defendants or their representatives present when the same was measured or inspected?

A. No sir.

Q. 103 Previous to your measuring and inspecting the same, had not the defendants or one of them forbidden you to inspect or measure or take said Edward Lumber?

A. No sir.

Q. 104 Previous to your measuring and inspecting and taking said Edward Lumber, had you not heard that said defendants or, at least J. P. Glass, objected to your taking the same?

A. I had not. I heard he was trying to sell it.

Q. 105 Before measuring and inspecting the same did you ~~XXXX~~ inform him of the time that you would begin to work in measuring and taking up said lumber?

A. I did.

Q. 106 Where, when and in what way did you ~~say~~ notify him?

A. I notified him by mail, and think I sent him word by someone, but don't remember who, about 2 or 3 weeks before. I took it up.

Q. 107 If you knew that said defendants were trying to sell said Edward Lumber before you measured or inspected it, why did you take the same up without knowing the truth of the information?

A. I took it up because we had bought it and advanced money on it and had a lien on it. It had been delivered on our yard for us to take up.

Q. 108 Supposing a portion of said Edward Lumber can be shown by competent evidence to have been stolen or misplaced before measuring and being taken up by you, on whom would you contend the loss should fall?

O. The foregoing question or any answer thereto is objected to because hypothetical and because asking for the opinion of the witness, and does not call for facts or knowledge J.C. Na

Q. A. On Glass.

Q. 109 Would you so contend if such loss could be shown to have been after said lumber had been delivered on your yard, and before measurement and inspection?

O. The foregoing question is objected to for the reason stated above.---J.C. Noel.

Q. A. Yes sir.

Q. 110 Have you not considered and acted upon the contract sued upon, with respect to the property ^{and} lumber mentioned ~~where~~ ^{in, as resting only on your} ~~in, as resting only on your~~ ^{before} it was taken up by you.

A. Yes sir.

Q. 111 You had a very serious sick spell in the summer of 1903, did you not?

A. Yes sir.

Q. 112 About when were you taken seriously ill last summer?

A. June 24, 1903.

Q. 113 How long after taking sick was it before you resumed your business?

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A. About 2 months.

Q. 114 While sick and before resuming your business in person, to whom did you leave it in charge?

A. Myrtle Johnson.

Q. 115 In the rules for inspecting poplar lumber is not a board having one face ~~XX~~side as good as a second and the other as good as a # 1 Com. ~~and~~ select board?

O. The foregoing question is objected to because immaterial and because in grading rough lumber there are no such grades as select and #1 Com. ---J. C. Noel.

A. I have never observed any such rule. My idea of a select board is, a board having one clear face is a common and a board clear on 2 sides ~~will pass as a select or a clear sap board~~ *will pass as a select.*

Q. 116 In Standard lumber inspection is there any difference between a select board and #2 board?

A. If you were buying lumber and have ^a select grade, I should say there is a difference. A select board is not as good a board as a #2.

Q. 117. In inspecting the lumber which the defendants did deliver to you, did you not find at times take boards from the lumber of the defendants and grade it common and pass them over onto your lumber as selects and better?

O. The foregoing question is objected to because immaterial and irrelevant. ---J. C. Noel.

Q. 118

A. I don't think we did. We place ^dthe lumber where we could get the most out of it. If it would work better into bevel siding we would put it in that pile. If we could rip a select out of it, we put it on that pile.

Q. 117

Q. 118

How wide is bevel siding?

A.

From 4 to 6". It is finished at 3 3/8, 4 3/8 and 5 3/8".

Q. 119

Supposing a board to be 6" ~~wide~~ and a common in the rough will it make select when worked in siding?

A.

It might make select. It depends on the location of the defects.

Q. 120

Supposing a board to be 6" ^{wide} and grade in the rough common, and worked in to 5 3/8" wide bevel siding, could such siding be counted as select?

A.

Yes sir, and better.

Q. 121

If any lumber ^{with} which the defendants ^{have} been credited has been taken up after the 24th day of June, 1903, ^{except} the taking up of the Edward's Lumber, have you any personal knowledge of ~~it~~ ^{as to} the correctness of such credits?

A.

Yes sir, I have some knowledge of it. I have gone over some tallies, but don't know anything about the taking up of it.

Q. 122

What tallies you have seen after the 24th of June, 1903, can you state whether ~~xxx~~ it was for the tally of the lumber that was so taken up by your agents?

A.

No sir.

Q. 123

In answer to question 11 of this cross-examination, you stated that the C- V. Young Yard was the same as the Stout Yard and was called the Stout Yard ^{and} ~~and was called the~~ as you understood it. Do you ~~xxx~~ mean to say that these 2 yards are the same and that there was no such yard as the C. V. Young Yard?

A.

I do not think that there was any yard called the C. V. Young Yard. All I know of the yard was what the Glass boy told me about it.

Q. 124

Does not the contract on which you sue call for the C. V. Young Yard for about 200, 000,?

A.

Yes sir.

Q. 125.

Is ~~not~~ ^{not} it a fact that your books and account with said defendants have been kept in such a way that you are unable to state whether the C. V. Young Lumber ^{or any part of it} was delivered?

A.

As I said all we know is what Glass told us ^{what yards} ~~was~~ from ~~sub~~ ^{the lumber came} and such a yards. We had ^{it graded} ~~agreed~~ accordingly.

Q. 126

Was there any lumber on your yard, delivered by said defendants at the time you took ill, that had not been measured and inspected?

A.

Yes sir.

Q. 127

Had you observed or noticed the piles or stacks of such lumber that was then on your yard?

A.

I think there were two piles.

Q2 128

About how much would be your guess from your observation of these two ^{was there} piles or in each of ~~them~~ ^{them}.

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- A. I would not be able to make a guess. I remember seeing it in the piles just a short time before I was sick, but could not state with any certainty as to the size of the pile.
- Q. 129 As a matter of fact, was there but very little of the lumber that had been measured?
- A. I think I cleaned up the yard in June.
- Q. 130. Did you not remember that previous to your sickness there had been none of the C. V. Young Yard delivered?
- A. I don't remember off-hand whether there had or not.
- Q. 131 Do you all contend that it had?
- A. No sir.
- Q. 132 After this suit was brought, and after the credits shown upon your books have been entered, have you not found and heard of there being found some tallies for lumber from the defendants in an old trunk?
- A. I have not found any. I heard you say that there has been been found some tallies, but that is all I have heard about it.
- Q. 133 On or about the 14th day of December, 1903, in your store, in Pennington Gap, in my presence and your presence, did you not hear one C. C. Douglas say that there had been found in an old trunk some old tallies for Glass Lumber?
- A. No sir, I did not.
- Q. 134 You have heretofore said, before taking ~~the~~ up the Edward Lumber that you notified Mr. Glass, Did you notify him that you were going to take the same up?
- A. *in writing*
as I stated before ~~that~~ I sent him word by someone.
- Q. 135 Are you sure that you mailed him a letter?
- A. Yes sir. I may have sent it or mailed it.
- Q. 136 If you sent it by someone, *by* whom did you send it *with*, if you remember?
- A. I think I sent it by one of his drivers or by Mr. Davidson. I am not positive.
- Q. 137. Were these the only times then that you notified him?
- A. I don't remember. I think I told him at one time out here on the yard, that we were ready to take up the lumber.
- Q. 138 Since reflection, *do* you say that you are sure that you *notified* ~~sent~~ him word by mail?
- A. I am sure I sent it by mail, or by hand.
- Q. 139 Do you remember as to whether it was written or typewritten?
- A- I think it was typewritten.
- Q. 140 Was that the one sent by mail?
- A- I am not positive.
- Q. 141 Was the typewritten one the last letter ~~the~~ you ever wrote him?
- A- I do not remember.
- Q. 142 I hand you *a* paper which purports to be *signed* ~~sent~~ by the Pennington Lumber Co. Per A. Johnson. Take it and state whether you

~~have~~ ^{written} said paper and sent it to Mr. Glass.

A. Yes sir, I dictated it and signed it.

Q. 143 Will you please file said paper as a part of your deposition?"marked letter".

A. I herewith file the same marked as requested.

Q. 144 Do you remember having a conversation with J. P. Glass with respect to the Edward Lumber near the rolling mill in Pennington Gap?

A. Yes sir.

Q. 145 Was that not just a few days after the date of the letter which you just filed?

A. I don't know whether it was after or not.

Q. 146 What is your best impression, whether before or after?

A. I could not state. I don't know whether it was before or after.

Q. 147 Did not, on that occasion when you had the conversation with Mr. Glass at or near said rolling mill, he tell you that that he had sold the said lumber to one Dodson, and that you had measured the last of the lumber you had ever measured for him?

A. No sir.

Q. 148 State whether Sam Stewart had done any measuring or inspecting on any of the lumber which you received from said defendants, or either of them, previous to the date of your illness.

A. He measured some oak for John Glass and, perhaps, some some chestnut, but I am not sure about that.

Q. 149 Do you mean to state that he ^{did not} measured nor inspected any poplar?

A. Don't think he did. If he did it was very little, and if if he did, it was in Mr. Glass's presence.

Q. 150 Do you not remember of J. P. Glass, after he had measured and inspected a portion of said lumber previous to June, 24, 1903, complaining to you of the inspection of Mr. Stewart's?

A. to Q. #151. He was there and said he wanted to get Mr. Stewart to measure and Davidson to tally. We sent him a check for it, and the book shows that he got the check for that identical measurement.

A. to Q. #150. No sir. On the contrary, Mr. Glass wanted to have ^{it} left to him, Sam Stewart, to measure it.

Q. 151 How do you know he left Mr. Stewart?

Q. 152 Did he not come to you and tell you that the reason that he left Sam to measure and inspect the lumber, was that Sam was not doing it rightly and that he did not want to stand by and see it done, and that there would be a hereafter, or words to that effect?

A. He did not.

Q. 153 Did you measure and inspect any of the said defendants' lumber or either of them after June 10, 1903, except the Edward Lumber?

A. Well, I could not say that I did not measure any after June the 10th; I did not measure any after June the 24th.

Q. 154 Have you found in your tally sheets of same inspection a measurement made by one Joseph Lawson for a portion of said lumber?

A. No sir.

Q. 155 Have you found with any of your tally sheets a tally made by Sam Stewart, or some person for you, on 2nd of July, 1903, on the C. V. Young or Stout Land?

A. No sir. I do not think there was any lumber measured that day.

Q. 156 On the ~~21st~~ 2d day of July, were you able to be about, and were you about your lumber yards?

A. No sir. I was sitting up out on the porch.

Q. 157 If any Stout or Young Lumber was inspected by Joe Lawson or by Sam Stewart or J. M. Davidson on the 2d day of July, 1903, state whether or not any credits has been given for such measurements on account of the defendants.

A. I could not state whether there has or not. I don't know anything about it on that date.

Q. 158 Have you gone over the calculations made from the tallies by Stewart, to know if his calculations ^{to be} ~~were~~ correct?

A. I went over the footings. I had Davidson and Stewart both to go over the tallies.

Q. 159 Do you not know it to be a fact that J.M. Davidson did assist in inspecting ~~th~~ a portion of the said C. V. Young Lumber?

A. No sir, I don't, but have heard it said that he did.

Q. He tallied and Stewart graded.

Q. 160 Davidson, at the time was at work for you, if he did tally, was he not?

A. Yes sir.

Q. 161 After your illness, you went away on a trip for a while did you not?

A. Yes sir.

Q. 162 About what time did you leave and what time did you return?

A. I think I left, evening of the 5th of July and was gone seven weeks.

Q. 163 Have you not heard since your return home, while being away from home through some of your representatives left in charge of your business, that Joe Lawson did assist in inspec-

ting a small portion of the lumber?

A. I heard Stewart say that he measured something Like 300X' that he and L. G. Glass disagreed on.

Q. 164 Do you know whether you have the inspection or measurement of said Lawson?

A. I have never seen anything different from Stewart's tallies. I suppose it was the only tally gotten.

Q. 165 At the time of the contract between yourself and L. G. & W. E. Glass was entered into, please state whether or not Said Glass did not inform you at the time the said contract was entered into, that a portion of the lumber included in this contract would come from the C. V. Young *land* and that the first contract between yourself and L. G. & J. P. Glasse called for only *about* 200,000', and that there would be more than that sawed on the C. V. Young *land*, and that they did not consider that any overplus, ~~and that~~ the 200,000' should go into the first contract between you and the said J. P. & L. G. Glass or words to that effect? *and all overplus should go in the contract between you & L. G. & W. E. Glass.*

A. No sir.

Q. 166 In the same conversation, did you not get the contract dated January, 3d, 1902, between yourself and the said J. P. & L. G. Glass, and look at it to see how much it did call for on the C. V. Young *lands*.

A. I could not say whether or not I did, don't remember. The contract called for all the poplar they would manufacture there.

Q. 167 Did not Mr. L. G. & W. E. Glass or one of them on the occasion of the signing of the contract between yourself and L. G. & W. E. Glass, tell you that all over and above 200,000' on the C. V. Young *land* was to be included within this last mentioned contract?

A. Don't think they did.

Q. 168 *ok* About the time of said contract between yourself and L. G. & W. E. Glass was entered into, didn't L. G. & ~~W. E.~~ W. E. Glass or one of them inform you that there would be only 20,000' of the lumber mentioned in that contract that would not come from the *to* Elkanah Young *land*, and that the residue would come from the C. V. Young *land*?

A. They did not.

Q. 169 I believe that you have not advanced anything on the Ozro Young Yard mentioned in the said contract?

A. I think that ^{part of} the advancement ~~was~~ *was* January 27, 1902, on the Ozro Young Yard. It says on the book Stout--Young Yard, and I think, on looking at it more closely, it is interlined Ozro Young.

Q. 170 What is the amount of this advancement?

A. \$310.00.

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Q. 171 What part of the \$310.00 was to be an advancement on the Ozro Young Yard?

A. I could not say.

Q. 172 At the time of the contract sued upon, dated January 3, 1902, was any of the lumber contracted for already sawed into boards, or was it standing in trees?

A. I don't know. I never saw the logs. I could not state whether any was on stick or not.

Q. 183 In order to refresh your memory, didn't the timber mentioned in said contract or a great portion thereof, at the time of said contract was entered into, belong to the Early Boys, and were you not so informed, and that considerable of the money, and money ^{derived} by notes given by you, to the defendants, went to pay the said Early Boys for the timber while it was standing uncut?

A. It seems to me, but I am not positive, that the Early Boys had sold the C. V. Young Lumber to be made from the C. V. Young Timber. I think I paid the Early Boys \$200.00 on the contract, and they intimated all along that Early boys had not paid C. V. Young a centX of it.

Re-examination.

Q. 1 You were asked in your cross-examination if you had advanced J. P. & L. G. Glass any money upon Ozro Young Yard. Your answer was that you thought you had advanced January 27, \$310.00, upon the Stout Yard and Oxro Young Yard. You were then asked how much of the same was advanced upon the Ozro Young Yard. Your answer was you did not know. I now ask you to examine the contract of January 3, and see if it does not state that \$100.00 was to be advanced on the Ozro Young Yard and \$200.00 on the Smith Stout Yard.

O. The foregoing question is objected to because the contract shows for itself ^{from} what ~~for~~ it is paid.---E. W. Penn.

A. It does.

Q. 2 State whether or not on Examination of the contract your memory has been refreshed as to ^{what} ~~the~~ amount of the \$310.00 advancement was to go upon the Ozro Young Yard, and if so, state how much.

A. It has been refreshed, and on looking more closely at ~~xx~~ the book, I see that Ozro Young is written in between Stout and Young. I might say that \$10.00 was added so that the ~~xx~~ note would net \$300.00.

Q. 3 In your examination in chief, in answer to question 11 you say that on the C. V. Young and Stout Yard, you have advanced June 27, 1902, \$310.00. ^{Further} ~~You should~~ say I think that it is January 27, 1902, instead of June 27, 1902: Is this th

the same \$310.00 just spoken of, and if you say it is, explain how you get it in your deposition on the C. V. Young Yard instead of the Ozro Young Yard.

A. It is the same. The Ozro Young Yard had escaped my memory until my attention was called to that part of the contract.

The further taking of the depositions is adjourned ~~until~~ by agreement until the morning of December 30, at the same place mentioned in the caption.

Further taking of these depositions is resumed at the place mentioned in the caption on the 30th of December, 1903, pursuant to agreement.

Present, Same parties as on yesterday.

The further taking of the deposition of A. Johnson is suspended for the present, but the right is reserved to either party to recall him for the further examination.

Elkanah Young, another witness of lawful age, being duly sworn, deposes and says:-

Q. 1 State your age, residence and occupation.

A. I am 69 years old or soon will be. 68 and past. I reside on Wallen's Creek and am a farmer.

Q. 2 Are you acquainted with L. G. & J. P. Glass, defendants in this suit?

A. Yes sir, I am acquainted with J. P. Glass and know L. G. Glass.

Q. 3 State whether or not you are the Elkanah Young that sold L. G. or J. P. Glass sometime during the year, 1902, timbero on your place on Wallen's Creek, Lee County, Va. If you are state to which of these parties it was sold.

O. The foregoing question and any answer thereto is objected to because any lumber or timber which the witness may have sold to the defendants is not included in the contract sued upon; and is, therefore, irrelevant in this case. E.W. Penn

A. I sold them some timber, from the first probably--I contracted first with L. G. Glass. I first made contract with him.

Q. 4 State, if you remember, when this contract was made.

A. I think in the year, 1902. It might have been the ~~fore~~ *of the winter of the Spring* ~~part~~ *part* or early part in the year. *later*

Q. 5 State how much timber you sold to L. G. & J. P. Glass.

A. 18,866', I think, is my recollection.

Q. 6 State the kind of timber.

A. Poplar.

Q. 7 State, if you know, when this timber was taken from your lands and on whose land it was sawed.

A. It was sawed on the C. V. Young Yard.

Q. 8 When was it taken from your land?

A. It was taken along in the spring of 1903 or latter part of 1902.

Q. 9 State, if you remember, when you received payment for this timber from L. G. & J. P. Glass, if you have received payment.

A. They paid me for it, but I don't exactly remember the date. It was directly after yarding the timber. They paid some earlier, but I made them pay so much before ~~the last part of the winter.~~ *I let the timber be cut.*

Q. 10 State, if you remember, how much they paid you for it.

A. \$6.50 per thousand ft.

Q. 11 Do you know when this lumber was sawed and put on stick?

A. Pretty soon after being hauled.

Q. 12 State, if you know, if this lumber purchased from you, was kept separate after being sawed?

A- I am not certain. I was not there.

Cross-examination, by the defendants.

Q. 1 If I understood ^{you}, you stated in your examination in chief that you sold J. P. & L. G. Glass in the early part of 1903 some timber from your land, and that by your first contract that this sale was made to said defendants. State whether there was another contract afterwards.

A. No, there was no new contract.

Q. 2 Was your contract in writing?

A. No sir.

Q. 3 Who made the contract with you?

A. L. G. Glass.

Q. 4 You never did have any conversation with J. P. Glass *about it.*

A. No sir.

Q. 5 You stated that they paid you down for part of the timber?

A. Yes sir. After we closed the trade, they paid me part of it, just before they began to cut it.

Q. 6 Did you consider the contract completed, before they had paid you a portion down?

A. I had nothing more than a verbal contract.

Q. 7 You didn't consider the trade closed until they had paid you a part of it.

A. I couldn't consider, ~~only~~ that way.

Q. 8 Who paid you for the timber?

A. L. G. Glass.

Q. 9 How do you know that J. P. Glass had an interest in it?

A- I don't know for a certainty. I had heard that they

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were partners.

Q. 10 At the time that L. G. Glass made the trade for the timber, ^{and} at the time he paid you for the same, did he at any time say that J. P. Glass had an interest in it and that they were partners.

A. I had heard the partnership had been dissolved and that L. G. & W. E. Glass were partners.

Q. 11 At the time you closed your Contract with L. G. Glass for the said timber, you say you understood that he and W. E. ^{Glass} were partners?

A. That was my understanding.

Q. 12 How did you get this understanding?

A. L. G. Glass told me himself.

Q. 13 Then at the time that the trade was finally closed, you ^Knew that Mr. J. P. Glass had nothing to do with it?

A. I knew he had nothing to do with it at the time.

Q. 14 Did you hear of J. P. & L. G. Glass making a contract ~~we~~ for the sale of same lumber to the plaintiffs in this suit? If so, about when?

A. Couldn't say just when. ^{about} ~~about~~, after they first bought Young's timber. It may have been 2 years ago. I heard L. G. Glass say that he was letting Johnsons have his lumber.

Q. 15 Since you heard of said sale and contract, did you not also hear, ~~xxxx~~ and was it not reported currently in the neighborhood on Wallen's Creek, that J. P. & L. G. Glass had dissolved? ^{partnership} ~~partnership~~

Q. 16 The foregoing is objected to because only hearsay. J.C. No.

A. I don't remember that I heard ~~that~~ partners say so, but it was reported in the neighborhood, that they had dissolved.

Q. 16 Was it not after that you heard that they had dissolved that you sold your timber to L. G. Glass?

A. It was while they had their little store there. I understood they were ^{partners} ~~partners~~ after the store was closed.

I made the contract with L. G. Glass for the same before the store was closed and before I had heard the partnership was dissolved.

Q. 17. When you contracted ~~for~~ said timber to L. G. Glass was ^{it} ~~a~~ part of the contract that they were to pay ^{portion of} ~~the~~ purchase price therefor to you before it was cut?

A. Yes sir.

Q. 18 You would not have permitted them to cut the same if a portion had not been paid?

A. No sir.

Q. 19 Some time after you had made your first contract with L. G. Glass, and after ^{you} had heard that he and J. P. Glass

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had dissolved partnership, did not L. G. Glass come to you and tell you he would take it at the same prices agreed upon, and would pay you a portion of it down before cutting the same from off your land; and did you not tell him he could thus have it, and did he not then pay you a portion of it down?

A. Yes sir. He told me several times that he would pay me for the timber, and that he wanted the timber to cut, but he was getting along pretty well with the C. V. Young Yard, I. e., the yard to which he was to log my timber before he paid me.

Q. 20 If you remember, state about when the store spoken of, was closed.

A. Can't tell. Seems like it was along in summer or spring.

Q. 21 Was it not a fact that J. P. Glass kept this store ^{open} for 3 or 4 months after he and L. G. Glass had dissolved?

A. I don't know. It seems to me that J. P. Glass Moved the goods away pretty soon after I heard they had dissolved.

Q. 22 If you remember, state how the lumber which you sold to L. G. Glass was paid for, whether in money or checks.

A. In checks.

Q. 24 By whom were those checks signed, if you remember?

A. I think they were signed by L. G. & W. E. Glass.

~~XXXX~~ Re-examination.

Q. 1 Did you ever hear L. G. Glass say anything about having sold the C. V. Young and Smith Stout and Ozro Young Timber to the plaintiffs in this suit?

A. No, don't know as I have heard him say anything about the Stout Timber. It was my understanding that he was to let Mr. Johnson have the C. V. Young Timber. That is the way they talked to me.

Q. 2 State whether or not L. G. Glass told you where he was to get the money to pay the stumpage for the timber.

A. It is my understanding from Mr. Glass that he was getting the money from Mr. Johnson for my timber. Don't remember of having heard him say anything about the C. V. Young timber.

Q. 23 State whether or not you have heard L. G. & or J. P. Glass say from whom they purchased the Smith Stout Timber.

A. Don't recollect that I did.

For further questions of the deponent, the defendant reservethe right to recall witness for further cross-examination.

Signature Waived. -----

Witness claims \$2x001.00 for 2 days, mileage, 24cts.

being duly sworn

C. V. Young another witness of lawful age, deposes and says:-

Q. 1 State your age, residence and occupation.

A. Age, 59, reside on Wallen's Creek, Lee county, Va., and a farmer,

Q. 2. Are you acquainted with L. G. Glass and J. P. Glass, defendants in this suit?

A. Yes.

Q. 3 Are you the C. V. Young whose timber was manufactured into lumber by these defendants, L. G. Glass and J. P. Glass, and sold by them to the Plaintiffs in this suit?

A. Yes sir.

Q. 4 State whether or not you heard either L. G. Or J. P. Glass say to whom they had contracted the lumber that was manufactured from your timber.

A. I never heard J. P. Glass say anything about it. I heard L. G. Glass say that the plaintiffs were to get the lumber.

Q. 5 State to whom you sold the timber that L. G. & J. P. Glass or L. G. & W. E. Glass manufactured on your place.

A. P. T. & R. R. Early.

Q. 6 State, if you remember, who paid you for said timber, if you have been paid at all.

A. I was paid by two different parties, - is my recollection. First payment was made by L. G. Glass & J. P. Glass on the lumber July 21, 1902, \$479.74, balance by W. E. & L. G. Glass March 10, 1903. The last payment Sept. 26, 1903, \$400.33

Q. 7 How much timber was sawed in lumber on your place out of the timber that you sold to P. T. & R. R. Early on all your land?

A. Ash, cucumber and poplar, 72,454' on the Mt. side
lynn, 8,605' on same yard

On the other yard on the northeast end of the farm where all was to be yarded, he made three yards, first yard, --

156,469' on the ridge yard, Pop. Ash and Cucumber
2 yard, or Dry Creek Yard, --

61,036', Poplar, ash and cucumber. No oak except one log.

Q. 8 State whether or not the timber that you have enumerated was sawed at these three yards, - the Ridge Yard, Dry Creek Yard and sold to ~~xxx~~ R. & P. T. Early.

A. Yes sir.

Q. 9 At which one of these 3 yards was the Elkanah Young Timber sawed?

A. The Ridge Yard.

Q. 10 State, if you know, whether the Elkanah Young Timber was

when sawed, was stacked separate or in ~~xx~~ with the lumber that came off your place.

A. I don't know. I was sick at the time, and didn't get out.

Q. 11 Is there any of the lumber manufactured on either of the 3 yards mentioned by you now on your land?

A. There may be some culls. Haven't been there lately. Don't know.

Q. 12 State, if you know, what became of the lumber that was manufactured on your place on these 3 yards.

A. One yard came this way towards Pennington Gap. The one on the ridge, #1, having the 156, ~~469~~.

Q. 13 What became of the mountain and Dry Branch Yard? State, if you know, what became of ~~them~~.

A. I think it went the other way, towards Duffield.

Q. 14 State whether or not you have ever heard L. G. & J. P. Glass say where they were taking the Dry Branch and Mountain Yard Lumber to.

A. I think I heard L. G. Glass say he was taking it to Duffield or going to.

~~Qx~~ *Cross* ~~Re~~examination.

Q. 1 In the measurement of said timber, what rule for measurement, if you remember, was used?

A. Lumberman's Favorite Rule.

Q2 Who did the measuring of said Logs?

A. Mr. R. R. Early measured part of it. Me and L. G. Glass measured the other. I held the stick sometimes and sometimes he held it.

Q. 3 Were you present when R. R. Early was there?

A. Yes sir.

Q. 4 Were ^{proper} allowances made for windshakes, hollows, ~~crooks~~ and other defects?

A. Yes, some allowances were made for hol

ows, sometimes for windshakes, ~~crooks~~.

Q5 If you know, state whether or not Mr. R. R. Early is an experienced log measurer.

A. He has done a right smart of it.

Q. 6 What proportion, if you have the exact amount, was cucumber?

A. Can't say, but mostly poplar.

Q. 78 In measuring ~~xx~~ and scaling the logs was the ash and cucumber kept separate from the poplar?

A. I don't know. I didn't keep it separate and don't suppose they did.

Q. 84 Were you about the 3 yards at which said logs were sawed, while the mill was running?

A. Yes sir, I was at the yards frequently.

- Q. 910 If you know, state whether or not those in charge of the mill were taking pains and care in the sawing of said logs in to lumber.
- A. Well, I didn't notice particularly about that.
- Q. 10 State, if you noticed, whether they were sawing any portion or part of the poplar logs in-to one-inch ^{thick} and 6-inch wide lumber.
- A. I did not notice.
- Q. 112 If you remember, state what lengths the logs were cut in to.
- A. I think they were cut into 16, 14, 12, 10' lengths.
- Q. 12 What per cent. would you say, if you remember, of said logs were cut in to 16' lengths?
- A. Couldn't say. Don't remember.
- Q. 13 If you remember, tell about the average number of feet in the poplar logs.
- A. I couldn't tell, unless I had my books.
- Q. 14 Have you measurements of the said logs?
- A. I have, at home.
- Q. 15 Does that measurement show the length of the logs?
- A. No sir.
- Q. 16 If you remember, state who were the sawyers, who sawed said logs into lumber.
- A. Different parties. L. G. Glass and W. E. Glass and some others and a Hicks and Robbins.
- Q. 17 I believe you said in your examination in chief that the northeast ridge Yard contained 156,469' in the log, and after it was ~~sawed~~ sawed into lumber, was ~~loaded~~ loaded on wagons and started towards Pennington Gap. Is that right.
- A. Yes sir.
- Q. 18 About when was that yard loaded and started toward Pennington Gap?
- A. Began ^{after} ~~about~~ March 10, 1903.
- Q. 19 Can you state about when the last of this 156,469' was moved?
- A. Not exactly. Along in the spring or summer of 1903.
- Q. 20 Who were the teamsters, if you remember, and whose wagons hauled this lumber?
- A. Don't know as I can tell. I think W. E. Glass, Geo. Levasy. W. E. Glass went along. I think he was the foreman.
- Q. 21 Was not this lumber first short-hauled?
- A. Part of it ~~was~~.
- Q. 22 To where was it short-hauled?
- A. From the yard to Stickleyville, near Smyth Stout's House.
- Q. 23 Please reflect and then see if you cannot state that the

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whole of this yard had been moved ~~whent~~towards Pennington Gap before the first day of July, 1903.

A. I can't recollect.

Q. 24 You have stated in your examination in chief, I believe that the mountain Yard and Dry Creek Yard was moved and taken towards Duffield. State, if you know, about when the first of this lumber was so taken.

A. I don't just exactly know the time, but think they hauled the Dry Creek Yard first. Sometime, I think prior to Sept. 26. Think they were just about completing it then.

Q. 25

~~xxxxxxx~~ Re-examination, C. V. Y.

Q. 1 You were asked in your crossexamination about whether you observed in the sawing of the lumber if any was sawed into boards one inch thick and 6 inches wide, and your answer was you didn't know. I will ask if much of the boards was sawed into thick boards.

A. Yes, some, but Don't remember just how much, or just the amount.

Q. 2 Is it not a fact that whenever they could get a 5/4, 6/4, and 8/4 board, thhy sawed it that way?

A. I think they did.

Q. 3 At any time when L. G. Glass was moving the Lumber from off your land, did you forbid them to move the same, and, if so, why?

Q. A. When they got the Dry Creek Yard done, I told them they would have to pay me before they moved the other.

Re- cross,examination.

Q. 1 How much did you get per thousand feet for the Lynn and how much for the ash, cucumber and poplar?

A. \$3.00 for the lynnand \$6.00 for the ash, cucumber and poplar.

Further, this ^{deponent} ~~xxxxxxx~~ saith not.

Sig. Waived.-----

Witness claims 2 days, \$1.00, Mileage 16cts.

A. S. Stout, another witness of lawful age, being duly sworn, deposes and says:-

Q. 1 State your age, residence and occupation.

A. Age, 69 years, reside on Wallen's Creek, Lee County, Va., and ~~am~~ a farmer.

Q. 2 Are you acquainted with the defendants, J.P.&L.G.Glass?

A. Yes sir.

Q. 3 Did you hear of L. G. & J. P. Glass contracting to A. & N. L. Johnson, plaintiffs in this suit, a lot of lumber to be

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manufactured on Wallen's Creek, Lee County, Va., among which was some timber that came ^{from} off your land?

A. I heard that they had sold Mr. Johnson some, but whether they sold him that which came from my land, I don't know.

Q. 4 Who manufactured the timber into lumber that came from your place?

A. Mr. L. G. Glass.

Q. 5 On whose land was it sawed?

A. Mr. Jess Wilson's.

Q. 6 To whom did you sell the timber that was manufactured into lumber by L. G. Glass?

A. Banner & Fletcher.

Q. 7 About how much timber did you sell them?

A. Couldn't exactly tell you. Something like 70-80,000'

Q. Near as I can remember, about 72,000'.

Q. 8 Do you know what became of the lumber after it was sawed?

A. No sir. I saw them haul it towards Pennington Gap, but where they brought it, I don't know.

Q. 9 State whether or not there is ^{any} other Stout on Wallen's Creek that owned any timber in the year, 1902, ^{or 3} that was manufactured by L. G., J. P. or W. E. Glass?

A. There is none.

Cross-examination.

Q. 1 Was the timber you sold to Banner & Fletcher measured?

A. Yes, after being hauled to the saw-mill.

Q. 2 Who measured it?

A. I left it with Fletcher & Banner to measure it. I was not there but a few times. Mr. L. G. Glass and Banner, I believe, measured it.

Q. 3 Was all that yard hauled from ^{the} place where sawed towards Pennington Gap?

A. Well, I suppose it was. There was some oak sawed there that I let Shelbourne have and Glass sawed it into lumber by his mill ^{and} ~~or~~ some mill ^{chills} ~~close~~ where left on ^{the} ground.

Q. 4 When was this lumber hauled towards Pennington Gap?

A. Don't exactly know. It was sometime last fall or summer of 1902.

Q. 5 What was the character of the poplar logs after they were cut, that you let Fletcher & Banner have?

A- I understood that they were to run from 16 ^{and above} to 18". I did not think there was a log taken less than 18".

Q. 6 Now, if you remember, tell the character of these logs with reference to the smoothness and roughness.

A. I didn't pay much attention, but some were pretty nice logs and some were rough. As a general thing they were right nice logs.

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Q. 7

Was there any other timber sawed at this place besides that which came off your land?

A.

Yes sir.

Q. 8

Where did it come from?

A.

From J. M. Flannery's land.

Q. 9

Was not that timber known as the Hinkle & Banner Timber?

A.

I don't know anything about that.

Q.

Fletcher logged overthere. There was some that came from the top of the ridge.

Q. 10

Have you any idea of how much there was of the J. M. Flannery ^{timber} lumber sawed where your lumber was sawed?

A.

I don't know exactly how much. I suppose there was well maybe 20,000' or more than that. I would guess from 20-^{to} 30,000' in the logs.

Q. 11 d

Do you know or remember Mr. L. G. Glass ^{sawmill} being at Floyd Hinkles ⁱⁿ 1903?

A.

I never saw it there, but heard people say it had been there.

Q 12

Was any of the logs that came from your land sawed at Floyd Hinkles?

A.

No sir.

Q. 13

Was any of the stuff or logs that came from Elkanah Young or C. V. Young's sawed at the Floyd Hinkle set?

A.

No sir.

Q. 14

Were any of the logs which were taken, if any were taken, from off the land of Ozro Young, sawed or manufactured into lumber at the Floyd Hinkle Set?

A.

No sir.

Qx

Re-examination.

Q 1

Do you know where the Hinkle & Banner set was?

A.

No sir.

Q. 2

State whether or not ~~you know~~, if you know, that the lumber that was sawed from your timber and the lumber taken off the J. M. Flannery ^{land} was stacked separate?

A.

Can't tell.

And further this deponent saith not.

Sig. Waived.

Ozro Young another witness of lawful age being duly sworn, deposes and says:-

Q. 1

State your age, residence and occupation.

A.

Age, 32 years reside on Wallen's Creek and am a farmer.

Q. 2

Are you acquainted with the defendants, L. G. & J. P. Glass?

A.

Yes.

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Q. 3

State whether or not in the year, 1901 or 2, you sold to them or to either of them any timber on your land on Wallen's Creek.

A.

Yes sir, I sold L. G. Glass a boundary of timber.

Q. 4

About when?

A.

In December, 1901. Had no ^{written} contract until Dec. 16, 1901, ~~and that was a verbal contract.~~

Q. 5

When and where was the timber manufactured into lumber that you sold to L. G. Glass?

A.

In the fall of 1903 on my land on Wallen's Creek.

Q. 6

State as nearly as you can how much timber there was embraced in the contract with L. G. Glass.

A.

I suppose there was from 100 to 120,000'.

Q. 7

When and by whom were you paid for this timber?

A.

By L. G. Glass, one payment of \$100.00 paid in March, 1902, another payment, I believe, in October, 1903.

Q. 8

What became of the lumber manufactured from the timber?

A.

Some was hauled off and some is there yet.

Q. 9

The part that was hauled off, where was it taken?

A.

The men that were hauling said they were taking it to Duffield.

Q. 10

State whether or not you saw it hauled in the direction of Duffield.

A.

I saw wagons go down the road, but did not see any cross the mountains towards Duffield.

Q. 11

How much of the lumber is there ^{on the yard} at this time?

A.

15,000 or 20,000' cull and all.

O.

The answer to question 9 is objected to because hearsay and because what other people should have said about it other than the defendants in this case is not evidence against them in any particular.

Q. 12

Name some of the parties that you saw hauling this lumber manufactured from your ~~place~~ timber.

A.

Orb Sage, Geo. Levasy, Richard Johnson and John Duff.

Cross-examination.

Q. 1

Do you know whether or not the logs ^{which} came from the timber from your land, were measured?

A.

I saw some measured as they sawed them.

Q. 2

Whom did you see measure them?

A.

Believe I saw L. G. and W. E. Glass some of them and W. A. Gilliam measure some.

Q. 3

Were there not a great number of small fough logs in the timber?

A.

Yes sir.

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Q. 4 If you remember, who were the sawyers that sawed this timber?

A. L. G. and W. E. Glass and a fellow Gilliam Sawed some.

Qx And further this deponent saith naught

Sig. Waived. -----

Witness claims \$1.00 for 2 days, mileage, 60cts.

R. C. Duff, another witness being duly sworn, deposes and says:-

Q. 1 State your age residence and occupation.

A. Age, 26 years, reside at Comfort, Va., and am a farmer and merchant.

Q. 2 Are you acquainted with L. G. & J. P. Glass?

A. I am, with L. G. But not J. P. Glass.

Q. 3 State whether or not you, either for yourself or as agent for ^{other} some person, purchased any lumber from L. G. Glass delivered at Duffield, Va., or any other place ~~in~~ in the year, 1902-3.

A. I contracted with L. G. & W. E. Glass for lumber to be delivered at Duffield, Va., for myself.

Q. 4 What lumber was it that you contracted for.

A. *The* C. V. Young and one yard from Ozro Young's place.

Q. 5 When was this contract made?

A. Sept. 2, 1903.

Q. 6 How long before Sept. 2, 1903, had you been negotiating on the trade?

A. Something like 3 weeks.

Q. 7 Where was this lumber at, at the time you entered into this contract with L. G. & W. E. Glass?

A. I suppose it was all on the yards where it was sawed.

Q. 8 The foregoing answer is objected to because the witness is not ^{to} give suppositions *but facts - E. H. P. atty*

Q. 8 State whether or not you know as a matter of fact that any of this lumber was ~~not~~ where sawed at the time of the contract.

A. Yes sir, on one yard, I don't think any was hauled.

Q. 9 Which yard?

A. On the mountain yard on the C. V. Young *place* was not hauled, and but little of the Ozro Young Yard had been sawed at the time.

Q. 10 How much of the lumber did you get on this contract from the C. V. Young Mountain Yard.

A. *Culls* 14,370' Good, 25,295 Com., 134' 5/4 Culls, 20,905' 4/4ch 3,340 Mill culls, part of it lynn, 630' Lynn good; 2,532' Com. lynn and 3399' culls.

O. So much of the foregoing answer as pertains to millculls is objected to because the contract ~~upenxwhichx~~ among the parts

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to this suit does not include that kind of lumber--E. W. Penn.

Q. 11 How much did you get by grade from the Dry Creek Yard?
on the C. V. Young land?

A. 9500' 1&2, 30389' Com., 1783' 5/4 culls, 15, 260' 4/4 culls.

Q. 12 How much lumber by grade did you get from the Ozro Young yard?

A. ~~14500' 1&2~~ 14601' 1&2, 27654' Com., 7692' 5/4 culls, 15506' 4/4 culls, 1699 mill culls.

Q. So much of the foregoing answer as pertains to mill-culls is objected for the reasons stated above. E. W. Penn.

Q. 13 Did you grade this lumber yourself?

A. Part of it.

Q. 14 Who graded the residue of it.

A. Henry Bowling.

Q. 15 Is that the Henry Bowling who resides at Norton?

A. He makes his headquarters at Norton, But lives in Ky.

Q. 16 To whom did you sell this lumber?

A. O The foregoing is objected to because irrelevant and immaterial. --W. E. Penn.

A. To the Evans & Kitchen CO.

Q. 17 Is that the same company for whom Henry Bowling is agent?

A. Yes sir.

Q. O The foregoing is objected to because the question assumes that Bowling is the agent of said company.

Q. 18 How much of this lumber did you grade yourself?

A. Something like ~~of~~ half or two thirds, I guess.

Q. 19 Did the company to whom you sold this lumber accept your grading as you made it, or did they scale your grading?

A. They regraded part of it.

Q. 20 How did your grading and theirs compare?

A. Not much difference in it.

Q. 21 Has all this lumber that you contracted for been taken up?

A. No sir.

Q. 22 Has anyone of the 3 yards been taken up?

A. I reckon so. They say that it is all there and the 2 yards of the C. V. Young land have all been taken up.

Q. 23 How much, in your judgment remains of the Ozro Young ~~that~~ has not been taken up?

A. I don't know.

Q. 24 Has all the Ozro Young ^{lumber} ~~timber~~ that has been delivered to Duffield been taken up?

A. I don't know.

Q. 25 When did you take up the last?

A. About the 5, 6 and 7th of Dec. 1903.

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The Lumber

Q. 26 Do you know whether or not you got all ^{the} ~~that~~ your contract embraces, all the lumber that was manufactured at these 3 yards or did L. G. Glass sell a portion to anyone else?

A. If he did, I don't know.

Q. 27 State whether or not L. G. Glass, after he contracted this lumber to you, offered to sell the same to other parties.

A. I don't know.

Q. 28 State whether or not L. G. Glass objected to your measurement and grading of the lumber you purchased from him.

A. Well, He took it. We had disputes over some planks sometimes.

Q. 29 How much did the ~~Evans~~ ^W Evans & Kitchen Co. lower your grade on this lumber, if any?

A. I don't know. Not much, just a little bit.

Cross-examination.

Q. 1 In measuring and inspecting the lumber which you got from L. G. & W. E. Glass, how did it seem to be manufactured?

A. Very well.

Q. 2 If there be any of the C. V. Young or Ozro Young Lumber at Duffield, which has not been ~~graded~~ or inspected, you do not know of it?

A. No sir.

Q. 3 Of your own knowledge, you do ~~not~~ know whether ~~there is~~ there is any left at the Ozro Young Young Yard?

A. Yes sir, I saw that about a week ago.-

Q. 4 Did you notice sufficiently to know about how much?

A. No sir. I was ~~in~~ about two or three hundred yards from the yard.

Witness claims 2 days time \$1.00 and mileage, 48cts.

Further this witness saith not. Sig. ~~Waived~~.

P. T. Early another witness of lawful age, having been duly sworn deposes and says:-

Q. 1 State your age and residence and occupation.

A. Age, 43, am a farmer and reside on Wallen's Creek, Lee County, Va.

Q. 2 What relation, if any are you to R. R. Early,

A. We are brothers.

Q. 3 Are you acquainted with J. P. & L. G. Glass, defendants in this suit?

A. Yes Sir.

Q. 4 State whether or not at any time in the latter part of 1901 or early part of 1902, you sold L. G. or J. P. Glass any timber on Wallen's Creek? If you say you did, state what timber it was.

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A. I contracted but don't remember the dates whether it was ^{of 1902} the first ^{part of 1901} or later. Along about Xmas 1901 it was we contracted the timber from C. V. Young.

Q. 5 With which one of the defendants did you make the trade?

A. With L. G. Glass.

Q. 6 Tell what he said at the time about his partnership business, if anything.

A. At the time he introduced this business to me he said that that Sam Barker was out of it and that J. P. Glass was in.

Q. 7 At the time that L. G. Glass traded with you for the C. V. Young timber and while he was negotiating for it did he say anything about having bought any other timber on Wallen's ~~Creek~~ Creek?

A. Don't remember his saying anything about it, only he said he had contracted for a yard from Fletdher & Banner, which is the Smyth Stout Timber.

Q. 8 Who was to get this timber ?

A. I suppose that Mr. Johnson Was to get it. Mr. Glass said he was making a deal with him- and wanted this stuff to go on the same trade.

Q. 9 Did you say that L. G. Glass told you that he was going to let Mr. Johnson Have the timber?

A. I would not say for certain that he ~~contracted the timber to Johnson.~~ ^{did}

Cross-examination.

Q. 21 State whether or not you saw any of the lumber after it was sawed, on the C. V. Young, the Ozro Young and the Hinkle & Banner Yards, or either of them.

A. I don't know anything about Hinkle and Banner Yard, but saw some of the other at a distance. I was at the mountain yard and saw that lumber.

Q. 2 Do you mean to say then that you had not seen the Stout Yard?

A. I was not up there.

Q. 3 Did you examine the lumber on the mountain yard?

A. No sir.

Q. 4 State whether you saw any of the lumber delivered to Je Johnson, by the defendants in Pennington Gap.

A. I only saw some wagons come down this way towards Pennigton Gap.

Q. 5 Were you acquainted with the C. V. Young ^{timber} ~~and~~ befor it was cut and sawed?

A. I was with the Ridge Side of the ^{mountain} ~~mountain~~. I helped get it out.

Q. 6 In your opinion as a lumberman, which was the better ~~that~~ ^{or that on the} timber on the mountain side ~~the~~ Ridge side?

A. Well, I have said and thought that the Ridge Side cut out better than the mountain according to size of the timber.

Q. 7 State whether you ever went over the C. V. Young ~~xxx~~ timber on the Ridge side and examined it.

A. Only a portion of it.

~~QxxSxx~~ And further, this deponent saith not.

Signature--Waived. -----

It is agreed that the formal certification of officer taking these depositions be waived; but depositions to be read as if ~~the~~ a proper certificate was attached hereto
 E. H. Pennington atty for Supt
 J. C. Noel Atty for Alppa.

Deposition of W. Johnson resumed by the plaintiffs this the 4th day of January, 1904, at the law- office of E. W. Pennington, in Lee Gunty, Virginia, by agreementx of the parties.

Present, J. C. Noel, counsel for the plaintiff, E. W. Pennington, counsel for the defendants.

Witness, A. Johnson, being recalled, deposes and says as follows in his ^{cross}reexamination by plaintiff.

Q. 1 In your ~~cross~~examination in answer to question 3, you say, "The highest price that I remember of having paid, was to Glass on the Hinkle & Banner Contract, \$9.00, \$17.00 and \$25.00 per M", and that there was a contract in force at the time, but no lumber had been delivered on it at a higher price than the above prices. I don't remember the prices!"

And then in answer to ~~question~~ 4, which was "approximately, how much higher in prices?" Your answer was, "On this I think the prices were 10, 20 and \$30.00 per M!" And then you were further asked in question 5, what was the highest that you remember ^{paying} ~~getting~~ for any poplar lumber delivered at your mill in Pennington Gap along about the First of 1903. Your answer, "I bought some little lots at 10, 20 and \$30.00 per M". Please state why you only bought ~~some little~~ lots of lumber at these prices.

A. Because they were the only lots offered.

Q. 2 At the time of the ^{breach of} ~~contract~~ sued on, if there was a ~~breach~~, state whether or not you had orders for lumber on which you could have placed all the lumber embraced within this contract at a profit to your firm.

CO. The foregoing question or any answer thereto is objected to because irrelevant and immaterial. --E. W. Pennington

Qx I could not state that we had orders to cover that amount but could easily have gotten ^{the order at ok} prices quoted, ~~if we had~~.

Q. 3 State whether or not that at any time from the first of September, 1903, up to the present time you could have taken the money that you had advanced to the defendants, and have purchased other lumber delivered to your mill in Pennington Gap of the same grades and quantity and same price per M feet that you were ~~x~~ to have on this contract with the defendant.

A. No sir.

Q. 4 Since the first day of September, 1903, have you been able to purchase at any price, if so state at what prices, you have been able to purchase as much lumber as you needed and could have used in your lumber trade.

A. No sir.

- Q. 5 State whether or not the plaintiffs of this suit have been ever ready, anxious and willing to carry out the provisions of this contract sued upon, on their part.
- A. Yes sir.
- Q. 6 Have you the checks given and the notes executed to the defendants in this contract on which they have received money and advancements, in your possession?
- A. Yes sir.
- Q. 7 I will ask you to file the same or all of them which you have not already filed in your deposition heretofore in an envelope marked notes and checks.
- A. I file them marked as requested.
- Q. 8 I will ask you to file all the tally sheets that you have in your possession of the lumber that has been taken up on these various contracts in separate envelopes. i.e., the tally sheets of the Stout Yard in one envelope marked Stout, the tally sheets of the Hinkle & Banner Yard in an envelope marked Hinkle & Banner, tally sheets of the Edwards Yard marked Edwards, tally sheets of the Lockhart Yard marked Lockhart, tally sheets of the Elkanah Young Yard marked Elkanah Young, tally sheets of the C. V. Young Yard marked C. V. Young, tally sheets of the Horton Yard marked Horton, and file them ~~with~~ as a part of your deposition.
- Q. 9 I file them marked as requested; also, some tally sheets marked I don't know what yard they belong to.
- Q. 9 In your cross-examination, you were asked in question 53 to state whether or not you have on your book an account against L. G. Glass, individually. Your answer is "We have an account known as the Dry Creek Yard". Please state how much of that account amounts to.
- A. The account against him is \$1022.70 and credit \$14.40, and it is the items filed with my affidavit sworn to before C. J. C ----- Notary Public of Wise Co.
- Q. 10 If the said Dry Branch Yard was one of the C-V. Young Yards of lumber, to whose account should the items be charged, L. G. or to the partnership of L. G. & J. P. Glass?
- A. To the partnership.
- Q. 11 When and from whom did you learn that the Dry Creek Yard was a part of the C-V. Young timber?
- A. I learned it since we began taking depositions. I think from C. V. Young.
- Q. 11 Did you know at the time of the advancement made upon this yard that it was ~~the~~ a part of the C. V. Young Lumber?
- A. No sir.

Q. 13

Supposing that L. G. or L. G. & J. P. Glass purchased ~~the~~ from Elkanah Young only 18,866' of timber, would that have made under any circumstance as much lumber as you have given credit for on the Elkanah Young Yard?

A.

No sir.

Q. 14

How many feet of all grades have you given credit for on the Elkanah Young Yard?

A.

99, 412'

Q. 15

Supposing that L. G. & W. E. Glass purchased from Elkanah Young only 18,866' at what prices on the 99,412' should the plaintiffs have given the defendants credit.

A.

For shipping culls \$9.00, Com. \$16.00 and 1&2 \$ 23.00

Q. 16

Supposing L. G. & J. P. Glass purchased the Elkanah Young timber, at what prices should they have been given credit for the whole amount?

A.

\$9.00, \$16.00 and \$23.00.

Q. 17

Supposing the Stout Yard or a portion of it had been turned in as Hinkle & Banner Yard or that the Hinkle & Banner Yard is the same as the Stout Yard, at what prices should they be given credit for on the Hinkle & Banner Yard?

A.

\$9.00, \$16.00 and \$23.00.

Q

Recross-examination.

Q. 1

While the defendants were delivering your lumber under ~~h~~ their contract dated Jan. 3, 1902, state whether you saw their teams arrive on your yards ^{with} any of the lumber, and tell what kind of teams they used and about how much they would haul per load.

A.

I noticed them come in but paid no attention as to how good the teams were ~~and~~ ^{was} how much they hauled per load.

O.

The foregoing question is objected to because immaterial and irrelevant. ---J. C. Noel.

Q. 2

Have you noticed sufficiently teams in hauling lumber to give a fair guess what would be on a wagon in a fair load of poplar lumber?

A.

Somewhere from 600' to 800'

Q. 3

Supposing Poplar to have been sawed and stuck some 8 to 10 months what would you say would be a fair, average load of such lumber for a team of horses or mules that were true pullers and that would weigh from 2500 to 3000 pounds?

A.

It would depend on the kind of roads altogether. I have seen such teams haul 1100' again from 700 to 800! I have never seen in this country a team that would weigh ^{3000 lbs} that.

Q. 4

Did you not in the grading and measuring of the lumber which you got from the defendants put some of it that you had credited as commons as to the defendants in your good pile?

A. Yes, I separated it. Our specialty is making bevel siding, and if we can get a strip 4 or 5 inches and not ^{to} exceed an inch of sap, on one edge, we call that a good ^{4 1/2} 4 1/2 inch in grading, as we can work up that in to bevel siding.

Q. 5 Did you not also in grading and measuring the lumber which you got from the defendants put ~~the~~ some of it which you graded culls as to the defendants into your common pile?

A. No sir, I don't think we did.

Q. 6 If I understood you in this reexamination in a question asked you by your attorney, you stated that you could not purchase for any price the quality of lumber mentioned in your contract with these defendants dated January 3, 1902, is that right?

A. I didn't say that. At least I didn't mean that. Of course we could have bought it at some price.

Q. 7 On the account of not having rough lumber with which to supply your trade, have you had to return any of the orders within the last, ---say 6 months?

A. We have lost one or two orders, that I remember of, and have not been able to quote ~~the~~ a number of people because we did not have the lumber in stock.

Q. 8 Have you not now quite a quantity of lumber upon your yard in Pennington Gap?

A. Yes sir.

Q. 9 Approximately, how many ft. of rough poplar have you?

A. Something like 200,000', might be more.

Q. 10 What would be your guess of the per cent. of the rough poplar, you have on your yards, would be ~~xxxx~~ classed as 1&2's, commons and culls?

A. More shipping culls than anything else. 50 per cent. maybe. Not over ten percent. common I can't think, not over 5 or 10 per cent. good, I mean #1&2.

Q. 11 Is not your stock in rough poplar lumber lower than what it was the latter part of the summer or early part of fall? i-e., less number of feet on the yards.

A. About the same as ~~it was same~~ to the number of feet but the grade is probably lower, now than it was then.

Q. 12 In answer to question 23 of your examination in chief, you file 3 orders for lumber as exhibits. Please examine said orders and state, if you know, who made them out, and are they not all made ~~by~~ in the same hand-writing?

A. Mr. W. L. Peck, Indianapolis, Ind., took the orders and used them to me. I presume they were made out by him. I think they are the same hand-writing.

- Q. 13 How much of the tallies filed in this deposition given by you did you make your self and which of them? How much did others for you make and which of them?
- A. I made all of them myself except 4 of the Elkanah Young Yard, 6 of the Stout Yard and one of the Edwards Yard which were made by Sam Stewart and 2 on the Horton Yard which was measured by Stewart and Tallied by J. M. Davidson. The 2 tallied by J. M. Davidson, I will mark J. M. Davidson. Those which S. Stewart made are signed by him.
- Q. 14 You have charged to the account of J. P. & L. G. Glass 2010' #1 Com. Sdg at \$15.00 per M. 935' 3/8 Ceiling at \$10.00 per M. 270' of 1 Com. 3/8 ceiling at \$10.00 per M. 1992' 1/2 inch #2 Com. Ceiling at \$10.00 and 550' #2 Com. 3/8 ceiling at \$8.00 per M. I will ask you, is it not a fact some few days before these things were given, if you did not give these prices to L. G. Glass ~~after~~^{for} said lumber?, --
- A. 1 Com Sdg, at \$12.00 per M, 3/8 ceiling #1 Com. at \$9.50 per M and 3/8 #2 Com. ceiling at \$7.50 per M?
- A. I don't remember that was any special price ^{agreed} upon. I remember that he and I were talking about Prices on such lumber.
- Q. 15 Then, if you did quote Mr. L. G. Glass #1 Com. @ \$12.00 3/8 ceiling #1 Com. \$9.50 and 3/8 Ceiling #2 Com. at \$7.50, you have charged him too much for the same in their account, have you not?
- A. Yes, if I made him that offer and he accepted at the time.
- Q. 16 Didn't Glass' team haul, when said siding and ceiling was ~~xxid~~ hauled, with the teams which were hauling to you the lumber in the contract sued upon?
- A. I presume they did, but I didn't see them hauling.
- Q. 17 At the time you quoted him on the same did he not tell you that the teams hauling your lumber would haul the same back home on their return?
- A. Don't think he did. Don't think he got the lumber until a long time after prices were quoted.
- Q. 18 Do you remember where you were when you quoted him prices?
- A. I think I was there on the lumber yard at the Planing mill.
- Q. 19 Have you any book, paper or memorandum which shows the date on which said siding, ceiling &c. was got by Glass?
- A. No sir. I don't know anything about the same myself.
- Q. 20 If you do not know when he got said lumber, how can you state that it was some considerable time after you quoted him prices on same, that he did get it?
- A. Because it was not charged to him for a long while after.

Q. 21 Is it not a fact that that the siding and ceiling &c.
were gotten
some time before the same was charged on your ledger?

A. I don't know about that.

And further this deponent saith not.

Signature, waived.-----

*Witness was sworn by Judge Pennington
by Consent.*

Att. for Defts

A. N. L. Johnson

vs } Depositions

J. P. & L. G. Glass

Received from James W.
Orr and filed January
the 14th 1904.

A. B. Munsey Clerk

A. Johnson 1 to 33

E. H. Young 33 to 37

C. V. Young 37 to 40

J. S. Young 40 to 42

R. B. Duff 42 to 44

J. B. Young 44 to 46

A. B. Munsey

The depositions of L.G.Glass, and others taken pursuant to an agreement at the law office of E.W.Pennington in the town of Pennington Gap, Lee County, Va., on the 22nd, day of January, 1904, to be read as evidence in behalf of L.G. & J.P. Glass in a certain suit in equity, now pending ~~x~~ in the Circuit Court for Lee County, Va., wherein the said L.G. & J.P. Glass are defendants and A. & N.L. Johnson are plaintiffs.

Present for the Defendants E.W.Pennington, and

" " " Plaintiffs, J.W.Orr.

The witness L.G.Glass, after being duly sworn, deposes and says:

Q. 1. Are you one of the defendants to this suit?

Ans. I am. My name is L.G.Glass.

Q. 2. Were you and your co-defendant, J.P. Glass, ever partners in any business, in which the plaintiffs were in any way concerned, if so what?.

Ans. We were partners in a saw-mill, and engine and its outfit; also a little store, which was located at Stickleyville, in this county, on the north side of Wallen's creek; also we were partners in the timbers known in this suit as the Smyth Stout, C.V. Young timber, and the Ozro Young timber. We were partners in nothing else.

~~Qx5~~. The foregoing question and the answer thereto is excepted to in ^{as} far as the same is in conflict with the written contract, entered into on the 3rd day of Jan., 1902, between the said L.G. & J.P. Glass of the first part and ~~x~~ A. & N.L. Johnson of the second part. or any other contract, mentioned and referred to in the plaintiffs bill.

J.W.Orr, Atty. for Plaintiffs.

Q. 3. I notice refferred to in the Copy of the Contract filed with your answer, that there is mentioned some timbers on the James Edwards land, The Dave Lockart land, and the Wm. Horton land: Please explain, if you can why, these three named sets of timbers were included in said contract, if you and your brother, ~~KXEX~~ J.P. Glass were not partners in them?.

The foregoing question is excepted to as inadmissible, and can not be admissi...

not be admissible for the same reason as ^{stated in} ~~the~~ the exceptions above named, and because the contract was the best evidence and can not be contradicted or varied by parol evidence. J.W.Orr.

Ans. It was included in this said contract because for convenience and to get rid of making another contract. This was the way it was talked at the time the contract was made. It was understood all along that I had no interest in either of said three sets of timber. Mr. Johnson was informed of this at and before the said contract was entered into.

Q.4. State whether you and your co-defendant ever received from said plaintiffs any money, notes, checks, goods or other thing of value as an advancement on any of the ^{timber and} ~~the~~ lumber mentioned in said contract, if so what?.

Ans. We did. The plaintiff's did pay us several ninety day notes, some checks, and a little merchandise. I have ^{had} ~~made~~ up a statement of such payments and which shows the date and amount of each, and on which yard it was paid us, and I here file the same marked "A". I took this statement as to the said payments from the Plaintiff's books. Some of the things which the plaintiffs have charged to the partnership account of L.G. & J.P. Glass should be charged to me individually and some to myself and W.E. Glass, and I ~~think~~ have from the plaintiff's books made up some statements, which shows to whom all the various articles should be charged, leaving out what I deny was gotten by any one of us three persons and what I contend is improper charges. All of which statements I here file marked "A", "B", "C" and "D". These statements also show what lumbers we have delivered and from each yard, and also the credits to which we think we are entitled on the plaintiff's books.

Q.5. I notice in the account filed by A. Johnson one of the plaintiffs, against you and J.P. Glass, he has charged 2019 Ft. #1 Com. siding at \$15.00 per M., 935 ft. 3/8 Com. Ceiling at \$10.00 per M., 270 ft. Com, # 1 Com. 3/8 Ceiling at \$10.00 per M., 1992 ft. 1/2 # 2 Com.

ceiling at \$10.00 pwe M. ft. 550 feet # 2 Com.3/8 ceiling at \$8.00 per M.: Please state if these charges are correct as to the account against you and J.P.Glass, and correct in prices?

Ans. This lumber should not be charged to the partnership account of myself and J.P.Glass, but should be charged to me alone. The prices at which they are charged are not correct; the siding should be charged at \$12.00 per M., the 3/8 ceiling # 1. Com, at \$9.50 per M. also the should the 1/2 inch stuff be charged to me at \$9.50 per M., and the 3/8 # 2. Com. should be charged to me at \$7.50 per M. ft. These are the prices which he sold the stuff to me.

Q.6. When did you get the lumber mentioned in the next preceding question, if you remember? and for what purpose?

Ans. It was the last days of July, 1902 we made the trade about it; and we got it out and separated it at the time I bought it. Bob Taylor helped me get it out, after we separated it we put it in a pile in the shed below the mill. It stayed there a few days and then I took it home. A. Johnson gave me the prices above stated, and I made the trade with him.

Q.7. How do you fix the time at which you bought this lumber from the plaintiffs?

Ans. I fix the time at which I bought this lumber, from a memorandum I have set down in a little book. And I took this same lumber home and put it into a house in which I moved some time in Sept. 1902. It was worked into the house some time between the 10th and 20th of August previous.

Q.8. I notice the plaintiffs have charged to you and J.P.Glass Bal. on watch, \$8.75; Cash, \$25.00. Gloves, 75¢ Shoes, 50¢, check, \$90.69 and Iron, 10¢: Please state whether these articles should be charged to the partnership account of yourself and J.P.Glass, if not to whom, if to any one? should they be charged.

Ans. These articles are improperly charged by the plaintiffs to the partnership of myself and J.P.Glass. They should be charged to

me individually. I got these articles a long time before we made our contract with the plaintiffs. Then in the credits given to the partnership account of myself and J.P.Glass, they give credit for sawing 38,566 feet logs, \$3.00, per M., \$115.69, this credit should be to my individual account. I had an individual account at the plaintiffs store before J.P. & Myself entered into a partnership.

Q.9. I notice in the plaintiffs' account filed ~~in~~ with A.Johnson's deposition, that they have you charged with July, 27, 1902, Handling lumber, 38,196 feet, \$5.73, and Aug. 19th, 1902, Time Handling lumber, \$4.00: Please state whether these charges are correct against the said partnership or to any one else? If not why not?

Ans. These last named charges are incorrect as to the partnership, and should not be charged to any one else, because Johnson agreed to take up our lumber which we were letting them have and not charge us with the expenses, if we would put it when it was hauled where he directed us to put it, and I never heard of the plaintiffs making any objection to where it was put by my drivers. George Livisay, Henry Sage were two of the drivers; the others have come from the State.

Q. State whether you ever had any conversation with A.Johnson, one of the plaintiffs in this case about these two last named charges, if so, what did he say about them, if any thing?

Ans. At one time, I saw these charges on his books against us, and I called his attention to them, that they were improper, and he promised to take them off, it was before this suit was brought, he promised to do this.

Q.11. I notice, that on said plaintiff's account which is filed with Mr.Johnson's deposition, that they have charged to your partnership account, \$300.00 as of July, 26th, 1902, "H. & Banner yd", and also Oct., 17th, 1902, "Chk. given July, 27th, 1902 advance on lumber on contract made that day, \$300.00: Are these two sums proper charges to your partnership account; explain about them, if you can.

Ans. They are both improper charges against the partnership account. Only one of these \$300.00 was gotten, and that by me, on the Hinkle and Banner yard. It should be charged to my individual account, that is, the first charge, I think. I got a \$300.00 check at the same time I made with the plaintiffs the contract dated July, 26th, 1902, and concerning the Hinkle, and Banner and Fletcher timber. It was paid me on that contract, and not on the contract of Jan., 3rd, 1902.

Q. 12. ~~XXXXXXXXXXXX~~ When did you and your brother J.P. Glass form your partnership, and when was it dissolved, if at all?

Ans. We formed our partnership about the last days of Dec., 1901, and we dissolved this partnership about the last of Aug., or the first of Sept., 1902.

Q. 13. Was your contract of partnership and agreement of dissolution of partnership in writing?

Ans. Neither of them were in writing.

Q. 14. Did you own or buy any other timber, than that mentioned in your contract with the plaintiffs, dated Jan., 3rd, 1902? If so, what timber, and when did you buy it and from whom? and for whom?

Ans. I did own in my own right some timber which I bought from H.F. Hinkle; I bought this Hinkle timber on the 8th, day of Jan. 1900; this contract with Hinkle was in writing, which I have and here file as exhibit "E"; I bought from W.E. Fletcher and V.S. Banner some 18,000 to 20,000 feet in the log, this last timber is also known as the J.M. Flanary timber. I bought this some time in the spring of 1902; I also bought from Elkanah Young some 18,000 to 20,000 feet for myself and brother W.E. Glass. My brother J.P. Glass had no interest whatever in either of these three bunches of timber.

The foregoing question and answer thereto ^{7 succeeding} and all preceding questions and answers which seek to set up the fact of a partnership between L.G. and J.P. Glass are excepted to as irrelevant and immaterial, because the contracts entered into by them, with the plaintiffs, are not entered into as partners, or as being a firm, but in their individual capacities, jointly and severally, J.W. Orr for the plaintiffs.

Q. 15. State whether J.P.Glass had any interest whatever in the timber which you bought from G.F.Hinkle, and the J.M.Flanary timber bought from Fletcher and Banner, and the Elk.Young timber?

Ans. He did not.

Q.16. Who paid for the ~~timber~~ G.F.Hinkle timber, J.M.Flanary, known as the Banner timber, and the Elk.Young timbers?

Ans. I individually paid for the Hinkle and J.M.Flanary timber; myself and brother W.E.Glass paid for the Elk, Young timber.

Q.17. State whether you had any contract of sale with the said plaintiffs for the ^{or the lumber to be made therefrom} timber [^] which you bought from G.F.Hinkle and the J.M.Flanary timber bought from Fletcher? If so, when that contract was entered into, and was it in writing. If so, where is the writing?

Ans. I did sell to A. & N.L. Johnson the ^{lumber made from the} timber which I bought from G.F.Hinkle and the J.M.Flanary lumber made from the Fletcher and Banner timber. This contract was in writing, dated July, 26th, 1902, and is the same contract filed with A. Johnson's depositions, Marked "Contract with L.G.Glass". (See answer to question 47 of A. Johnson's cross examination).

Q.18. State whether at the time of before you made the contract referred to in the last preceding question, said plaintiffs or either of them knew or were informed from whom you was getting the timbers out of which the lumber was to be made?

Ans. I told Mr. Johnson from ^{where} I was getting the timber out of which the lumber was to be made, and ^{went} to into said last named contract. The first talk we had about it was at Jonesville, at Brown's hotel. I gave him my prices for the lumber, and he put it down on a little menoranda; later on I came to Pennington and the contract was drawn up and signed, and the contract filed with A. Johnson's deposition marked, "Contract with L.G.Glass" is the same contract.

Q.19. State whether at any time while you were negotiating the trade mentioned in said contract dated July, 26th, 1902, Mr. Johnson claimed

or intimated to you that the lumber mentioned therein should go in on his contract with you and J.P.Glass, and dated Jan., 3rd, 1902.

Ans. He did not make any such claim.

This answer excepted to for the same reasons heretofore sated.

J.W.Orr for Pltiffs.

Q.20. State whether you and your brother W.E.Glass, had any contract of sale of any lumber to said plaintiffs? If so, state when it was made and for what lumber?

Ans. We did have another contract with said plaintiffs for the Elk. Young timber.

Q.21. State whether this last named contract was in writing, if so, where is it if you know?

Ans. It was in writing. It is the same contract filed with A. Johnson's deposition in answer to question 62 of his cross-examination.

Q. Sate whether at the time said last named contract was signed by you, if you told the plaintiffs or either of them, where the lumber was to come from, and out of what timber to be manufactured?

Ans. I did tell A. Johnson, one of the ^{plaintiffs,} ~~defendants~~ where the timber was to come from out of which the lumber sold therein was to be manufactured.

Q.23. From where did you tell him, Mr. Johnson, the timber was to come from, out of which the lumber covered by this last named contract was to be manufactured.

Ans. I told him that a part of it would come ^{out of} ~~xxx~~ of timber from the Elk. Young land, and a part of it out of the C.V. Young timber.

I told him that the contract between us and J.P.Glass, dated Jan., 3rd 1902 only called for 200,000 feet and that there was going to be something near 300,000 feet of it, and that being the case this overplus to go in on this last named contract d ated, Oct, 10th, 1902. He went and got the old contract and looked at it and said if it be that amount, he did not consider it, it should go in on the old contra act, and it might go in on this contract, that he would then get it al the same, but it would cost him a little more, than under the old contract called for.

The foregoing answer excepted to because in conflict with the written contract, of Oct., 10th, 1902, which is the best evidence.

J.W.Orr for Pltffs.

Q.24. At what point in the negotiations concerning the trade for the lumber mentioned in the last named contract of Oct., 10th, 1902, was it, that said Johnson was informed from where the timber was coming out of which the lumber was to be manufactured?

Excepted to for the same reasons above mentioned. J.W.Orr.

Ans. He was informed of this on the very day the contract was made.

Q.25. State whether you on your individual contract with said plaintiffs delivered any of the Hinkle and Banner and Fletcher lumber, if so how much?

Ans. I did deliver all of it that was fit to ship, except about between 3,000 and 4,000 feet which I let Letcher Horn have to go into his house.

Q.26. I ask you if the lumber delivered by you on your individual contract, is the same lumber with which you charge the plaintiffs in your account heretofore filed with your deposition, marked "B".

Ans. It is the same lumber.

Q.27. State whether you and your brother W.E.Glass, delivered to the plaintiffs any of the lumber, mentioned in your contract with them dated Oct., 10th, 1902; if so, how much.

Ans. Yes we did deliver to them lumber under this last named contract. And the amount is shown in exhibit "C" heretofore filed with my deposition, and which we therein charge to the plaintiffs.

Q.28. I notice in the account against you and J.P.Glass filed with the deposition of A.Johnson the plaintiffs have you charged with as of Nov. 4th, 1902, Belt, Pulley & Shaft and collar, \$26.95: Please state whether this or any part of it is a proper charge to you and J.P.Glass jointly?

Ans. It is not a proper charge against me and J.P.Glass. We got, I mean, W.E.Glass and myself got 40 ft. 6 inch 4 ply belt, and it should be charged to W.E.Glass and myself. We did not get the pulley, shaft and collar, so it should not be charged to any of us. I told Mr. Johnson to order

to order myself and W.E.Glass a belt,press pulley,shaft and collar. Afterwards he told me he had ordered it.And he sent me the belt. Later on,I saw him and spoke to him about it,and he told me the pully was broken,and said he would ship it back and order us another if we wanted one; I told him as it was broken,he could just send it back,and we would make out with our old one. I never did see the pully,shaft and collar. I know I never got any part of these things except the belt. Nor was any of them,except the belt used at our mill.Some time after I saw it on the book where he had it charged, I told him we had not gotten any part of the charge but the belt and he agreed to take it off the book against us.

Q.29. In answer to question 70 of the cross examination of A.

Johnson,he stated that he pointed out these articles to you and

told you to take them to Alexander Carnes shop and have them fixed;State whether he did point out to^{you} said belt,pully,shaft, and collar or either of them and tell you take them to Canes's shop and have them fixed or any words of that kind.

Ans. No.Nothing of that kind happened.

Q.30. State whether you and your co-defendant delivered to the said plaintiffs at their mill in Pennington Gap,or at any other place,all the lumber^{you} agreed to sell them from the various yards mentioned in the contract sued upon dated Jan.,3rd,1902. If,you say you did not do so,tell why you did not deliver the whole?

Ans. We did not deliver the whole of it. We delivered to the plaintiffs at their mill in Pennington Gap all the Smyth Stout yard, all the Dave Lockhart yard,all the Wm.Horton yard,and a part of the C.V.Young yard. I don't know how about the Edwards yard. We did not deliver the balance of the C.V.Young yard and the Ozro Young yard because the plaintiffs were improperly measuring and inspecting our lumber,they refused to put 4/4 & 6 inch clear boards into ^{garde} 1 & 2 as our contract called for,also the 7 inch wide clear boards;and because they refused to give us credit for something like 10,000 feet of the lumber which they did get.

Q. 31.

Q.31. Who sawed your lumber which you let the plaintiffs have?

Ans. Myself, Frank Hicks, J.P. Glass and W.E. Glass, and Floyd Key. These are all I remember who run the saw.

Q.32. State how much experience, if any have you had in running a sawmill? as a sawyer?

Ans. I have been running a saw at a mill for about six years, off and on. The plaintiffs made no objection at all while they were grading it, as to the way it was sawed.

Q.33. State whether in sawing said lumber you sawed as much ^{of it} as possible without lowering the grade into 1 X 6 and multiples of six?

Ans. I did, and the others who sawed also did the same. I noticed them in their work. I was with the mill most the time myself.

Q.34. What per cent, would you say, of said lumber was sawed into 1 X 6 inch boards?

Ans. I would say 12% of it, or probably 15% of it was so sawed.

Q.35. Now what per cent of the 1 X 6 inch boards was clear?

Ans. I would say from 40 to 50% of ~~the~~ the 1 X 6 inch boards was clear, and should have according to our contract been put into the good grade, that is, 1 & 2 s.

Q.36. Were you present when all the lumber which Johnsons did get was measured and inspected?

Ans. I was not present all the time. I was present when most of the Smyth Stout stuff was taken up; I believe I was present when all of the J.M. Flanary, that is a part of the lumber known in these proceedings as the Hinkle and Banner stuff. I was not present when the Hinkle part of the Hinkle and Banner was taken up. I was present when the Elk, Young stuff was taken up, except a part of about 39,000 feet of it, I was not present when it was taken up. I was present when what part of the C.V. Young yard which the plaintiffs got, was taken up all the time. I was not present when the Horton, Lockhart

and Edwards yards were taken up. J.P.Glass saw after those yards.

Q.37. How much if any of the 1 X 6 inch^{clear} boards was graded by the plaintiffs to you as 1 & 2s, that is good, while you were present?

Ans. I don't recollect of seeing a single board of that kind being put into 1 & 2s.

Q.38. State whether you asked, insisted and claimed while the plaintiffs were having your lumber graded, that all the 1 X 6 inch clear boards should be graded to you as 1 & 2s?

Ans. I did as to both 1 X 6 inch clear boards and also 1 X 7 inch clear boards.

Q.39. State whether your insisting and claim was heeded by the plaintiffs, or those working for them?

Ans. No. They put all such boards into common, and then put the same boards into their "good" piles. I mean by "good" pile, the number one and two piles.

Q.40. Who graded your lumber to Johnsons in so far as you personally know?

Ans. A. Johnson and Sam Stewart done the inspecting.

Q.41. What part of your lumber and when did Sam Stewart inspect and grade?

Ans. He inspected about 60,000 of the Elk. Young stuff, and also about 58,413 ft. of the C.V. Young lumber, that is, all of the lumber which the plaintiffs got from the C.V. Young yard, he inspected. He did not inspect any more of it in my presence or knowledge.

Q.42. While Sam Stewart was inspecting any of your lumber, state whether you and he had any differences as to the way he was inspecting the same, if so, state what he said about it, if any thing?

Ans. We disagreed all along. We disagreed for a while, and I finally told him that there would be a hereafter about it, and he said he had to steal to hold his job. Some time before he made this remark, we laid out some boards, and Joe. Lawson came afterwards and inspected them for us. He inspected something like 300 feet, and I here file Mr. Lawson's inspection marked "F" as he made it.

The foregoing answer is excepted to in so far as it gives any

any thing done or said by Sam Steward, outside of his duties as agent for the plaintiffs in their absence, if he was such agent. And to any thing done by Joe Jawson unless or until it is shown to have been done at the request of the plaintiffs, or in their presence.

J.W.Orr, for the Pltffs.

Q.43. Have you examined the books of the plaintiffs as to yours and J.P.Glass's account, your individual account, the account of yourself and W.E.Glass and the individual account of J.P.Glass, if so please state whether there has been given credit for all the C.V.Young lumber which was inspected and taken up by the plaintiffs or their agents for them?

Ans. I have examined all of the said accounts on said plaintiffs books, and also the copy of their account filed with the deposition of A.Johnson, and I do not find any credit give for any of the C.V. Young lumber; but I found that he had given credit on the account of myself and W.E.Glass, which A.Johnson calls in his depositions from the Stout yard, the following:

7532 ft. 1 & 2s Poplar,	\$23.00,.....\$173.23.
24563 " " Com., "	\$16.0.. 393.00
16074 " Culls, "	9.00. 144.66.

This lumber ~~from~~ was from out of the C.V.Young yard and should be credited to the account which the plaintiffs have against myself and J.P.Glass, and not to myself and W.E.Glass.

Q.44. State whether any of the C.V.Young lumber was delivered by you to the plaintiffs, and taken up by them, for which you have not and any credit? If so, how much, and who inspected the same and when?

Ans. There has been delivered by us to the plaintiffs 10,242 feet of poplar lumber from the C.V.Young yard for which they have not given any credit on their books. This lumber was inspected on the evening of July, 1st, 1903 by Sam Stewart for the plaintiffs, in the presence of J.M.Davidson and myself. I kept a tally of the same and so did Mr.Davidson. I here file the attly of this lumber which we have had no credit for, marked "G". I have had made up a statement of the lumber from this C.V.Young yard, which shows how much of the same the plain-

tiffs have given credit for on the account of myself and W.E.Glass and as Stout lumber, also showing what the difference is, marked "H".

Q.45. I notice that the tally just filed by you as exhibit "G" is dated July, 2nd, 1903; please tell why it is so dated if you can?

Ans. All the C.V. Young lumber ^{on the yard in Pennington Gap} _{on the evening of July, 1st, 1903} was ahead not inspected, and we expected to go ^{not} with it the next day, so the tally at night was left on the board and _{not} taken off the board. So on the morning of the 2nd day of July, 1903, Mr. J.M. Davidson, who was and had been keeping the tally for Johnson, came to me the next morning at the lumber yard and told me he had gotten a letter from home that some of his folks were sick and he would have to go home, and we could not take up any more then. So I then dated the said tally July, 2nd, and tore it off the Board and went home. I took Davidson's tally board to the store and gave it to Wade Ellison, who put it into Johnson's safe; he also put in the safe the board on which I had kept my tally, but after I had taken it off the board, I took my tally home with me. Some few days after this, and the next time I came back for them to take up lumber, I called upon Wade Ellison for the two Boards, and he gave them to me, and I tore from off the board said Davidson's tally, and gave it to C.C. Duglass, but I don't know what he did with it. Mr. Duglass was at that time working for and acting as if he was Johnson's agent. I think it was along about July, 26th, or 27th, 1903 that I gave said Davidsons tally to said Duglass. I think that was when the next taking up was done.

Q.46. Had you, Stewart and Davidson previous to the taking up of the lumber which is shown in the tally sheet just filed by you been inspecting any other lumber of yours? If so, what lumber was it and when was that done?

Ans. We did inspect and take up on the 30th day of June, 1903, and July 1st, 1903 some of that known as the Elk. Young lumber. There was according to my count of this 19,833 feet and amounted to at the price of \$28.00 for 1 & 2, \$19.00 for Com. and \$10.00 for ship. Culls to \$352.75. We counted this up, I mean, Davidson and I, at John Harber's

on the night of July, 1st, 1903. I think we differed about 07¢ in our calculations.

Q.47. Was A. Johnson or his wife at home when this lumber was measured and inspected on June, 30th and July, 1st, 1903? And what was the condition of A. Johnson at the time if you know?

Ans. I don't know whether Mrs. Johnson was at home. I think I saw Mr. Johnson sitting on his porch on ^{one of} the mornings ~~xxxxxx~~ while we were taking up this lumber. It was said he was very sick at the time.

Q.48. While Sam Stewart was inspecting your lumber, state ~~xxxxxx~~ what he did with all clear 4/4 six inch boards? If there was any?

Ans. There was some of such boards and also there was some 4/4 seven inch clear boards, and he put them all into the commons. He also put lots of other 1 & 2 boards into the commons.

Q.49. Did he object to such inspection?

Ans. I did, but it did no good, and he refused to put such clear boards into 1 & 2s. He said an eight inch wide board was as low as a number one and two board would come.

Q.50. Are you acquainted with the rules of inspecting and ~~grading~~ lumber to be a judge of where a board should be placed?

Ans. I think I am. I have been engaged in the manufacturing, buying and selling lumber for some eight years.

Q.51. What did you do with the residue of the C.V. Young lumber and the Ozro Young lumber which you did not let Johnsons have under your contract with them?

Ans. I took it to Duffield and let R.C. Duff have it?

Q.52. Which was the better grade of lumber, the Smyth Stout lumber or the Ozro Young and C.V. Young lumber, if you know?

Ans. The Smyth Stout lumber was the best lumber we had. It was from \$2.00 to \$2.50 per M. ^{better} than the Ozro Young lumber, and \$1.00 to \$1.50 per M. than the C.V. Young lumber.

Q.53. Who graded and inspected the lumber which you let Mr. Duff have at Duffield, if you know?

Ans. Mr. Duff inspected about 56,000 feet of it, and Henry Boling the balance of it. *about 127,000 ft.*

Q.54. Are Mr.Duff and Mr.Boling recognized competent inspectors of poplar lumber?

Ans. They are.They have that reputation

Q.55. Have you made or had made a calculation of what per cent of the poplar lumber which Mr.Duff got from you was 1 & 2 s,Commons and ship.culls? If so,what are the figures?

A The foregoing question and any answer thereto is excepted to and also the preceding question and answer,as irrelevant,immaterial and inadmissible.

J.W.Orr for the Pltffs.

Ans. I have had made and I have gone over the figures and think they are practically correct of the per centages of the said lumber which we let Mr.Duff have,and according to that calculation there was 21 per cent one and twos; 45 1/2 per cent common;and 33 and small fraction ship culls. In my contract with Duff 4/4,6 inch clear boards went in as common.

I have also ~~made~~ had made a calculation,and I think the g figures are practically correct as to the lumber which we let the plaintiffs have,and the poplar shows as follows:

According to Johnson's inspections 17% of the poplar was one & twos,50% commons and 36% per cent ship culls.This calculation was made of the poplar.

Q.55. In answer to gestion 42 of this deposition of yours,you sated in part that you and Sam Stewart disagreed all along while he was inspecting your lumber;please state state if you made any proposition to the plaintiffs or to any of their agents,to let J.M.Davidson inspect the same.If so,~~sate~~^{did},whether they do it?

Ans. I did offer to let said Davidson grade our lumber for us,but Miss Myrtle Johnson,who seemed to be conducting the plaintiffs' business refused to let Mr.Davidson do the work;she said she aimed for Stewart to inspect it,that she had somethinh else for Davidson to do.This was ~~xxxx~~ after July,1st.,1903,-I think about the last of that month.

Q.56. You have heretofore stated that you gave to Wade Ellison a tally sheet on the morning of Jul,2nd,1903,and that he put into a safe.

safe. Tell whose safe it was, and who Wade Ellison is:

Ans. It was a safe kept in Johnsons' store and Wade Ellison was then and is now clerking in that store of Johnsons'.

Q.57. State if at any time before this suit was brought, you proposed a settlement of your account with the plaintiffs, as ~~xxx~~ to the partnership of yourself and J.P. Glass: If so, state when, how often and to whom? you made the offer of settlement.

Ans. I did propose a settlement with Miss Myrtle of our account, first ~~xxx~~ as I remember along in Aug. 1903, and ^I told her we had the money ready for them for what we justly owed them; she refused to settle and said she did not want the money, but wanted the lumber; soon after this offered again to settle our account with said Miss Johnson; Mr. Davidson was present when I did this; she again refused to settle; but at this time she did not assign any reason why she did not want to settle.

Q.58. Where were the plaintiffs at the times you offered settlement with Miss Johnson of your account, if you remember?

Ans. At this time, Miss Johnson told me that her father and mother, who are said plaintiffs were out West; Mr. Johnson was sick along about that time. Mr. Davidson was at my place, just a short time before this suit was brought, and I sent by him a note to Mr. Johnson telling him I was ready to settle with him and pay him what, we owed him if any thing, that I considered the contract forfeited.

Q.59. You have stated that a portion of the C.V. Young and the whole of the Ozro Young yard were not delivered to said plaintiffs: Would you have done so, and delivered the same, if the plaintiffs and those working for them had have given you honest, fair and proper inspections of your lumber?

Ans. We would have delivered every board of the said two yards, had the plaintiffs in their inspections given us a fair and proper inspection of the same.

Q.60. Have you the printed rules of inspecting poplar lumber as gotten out by the Hardwood Manufacturers' Association of the United States, if so, please file the same here marked as exhibit "J".

The foregoing question is objected to because this Standard is not specified in the contract to be used in the inspection and grading of the lumber, and because the edition filed, did not come out until June, 1902

J.W.Orr, for Pltffs,

Ans. I ^{have} such rules, and here file the same as requested, marked "J".

Q. 61. Who all was present if you remember when you tore from the tally Board the sheet which Wade Ellison took from the safe, and when you gave it to C.C.Duglass?

Ans. I don't remember any other persons being present at the time, except my brother W.E.Glass; I think there were others present, but just who I do not remember.

Q. 62. I believe you have said you were not present at the time the plaintiffs' took up, or had taken up, that part of the yard called the Hinkle and Banner yard, which came from off said G.F.Hinkle's land: Please state if you know how much there was of this Hinkle timber in the log?

Ans. The logs of the Hinkle timber was measured and there was of it about 33,053 feet ~~M~~.

Q. 63. State whether the plaintiffs got the whole of the lumber made from this Hinkle timber, if not, what part of it did they get?

Ans. The plaintiffs got all of the lumber made from the Hinkle timber, except the mill culls and between ~~M~~ 3,000 and 4,000 feet which Letcher Horn got. It was all poplar. I guess 2/3 of this which Horn got was cull, and the residue common.

Q. 64. About what per cent of this Hinkle timber was mill-culls after it was sawed into lumber?

Ans. I run the saw most of the time while it was being sawed, and was present when it was all sawed; I took pains in sawing it, and I don't think more than ten to twelve per cent of it would have been mill-culls.

Q. 65. How many wagon loads of this Hinkle lumber did the plaintiffs get, if you remember, and about what time of the year was it hauled to Pennington Gap.

Ans. It was hauled some time in the Fall of 1902, and there was as I

remember twenty-seven good two-horse wagon loads of the poplar which we hauled to the plaintiffs.

Q.66. How many feet do you say there was on an average in each wagon load of this lumber?

Ans. It would run from 900 to 1000 feet to the load, I think.

Q.67. How long had this lumber been sawed and stuch before it was hauled to Pennington Gap to the plaintiffs?

Ans. It was sawed and stuch in February, 1902, and was hauled some time as I remeber in the Fall after. My statement as to how many loads there was of it, is made from the short-hauling of it. It was first hauled from the place where sawed to Stickleyville and there unloaded, and it took them 27 loads to do this. I don't know how many loads were made of it from Stickleyville to Pennington Gap. I think it took more loads from Stickleyville to Pennington Gap than from the mill to Stickleyville. There was also 8 ~~xx~~ or 9 wagon loads of the oak. It ought to have measured out 6,000 feet at the least calculation. I was not present when this Hinkle oak was taken up by the plaintiffs.

Q. I believe you have heretofore said in this deposition that you were present when the plaintiffs took up that part of the Hinkle and Banner lumber which came from the J.M.Flanary lands: Please state how much of this timber was there in the log if you remember?

Ans. There was from 18,000 to 20,000 feet of this J.M.Flanary logs.

Q.70. State whether the plaintiffs got the whole of the lumber made from the J.M.Flanary timber?

Ans. They got it all except the mill culls, and there was not more than 5 to 7% of this mill culls, when it was cut. And it would have more than sawed out into lumber, that is, there ought to have been more feet in lumber than there was in the logs.

Q.71. Which was the best class of logs, the J.M.Flanary or the Hinkle logs?

Ans. The Flanary logs were the best, and also the lumber was the best.

Q.72. In the event the Court takes jurisdiction of the question of

damages and off-sets in this case, is it your desire to have the amount for misgrading, and mis-inspection of your lumber, if there be any shown off-set against what the statement "B" of your account shows you and J.P. Glass owe said plaintiffs?

Ans. It is our desire to so have all mis-inspections and wrongful inspections off-set against the amount which said statement shows us to be due said plaintiffs.

Q. 72. I think Mr. A. Johnson in his deposition has stated that you well told him you were ^{well} pleased with the grade and inspection of your lumber: Please state whether you ever did so tell him, or any words of that kind?

Ans. I never at any time told him or any other person such; but on the contrary, I disagreed with him and his agents all the time, and was not pleased with ~~h~~ the inspection.

Q. 73. As a lumberman, what per cent better was the Smyth Stout lumber than the Ozro Young lumber?

Ans. It was considerably better, I think it ought to have been from 7 to 10% better than the Ozro Young.

Q. Who paid for the Elk Young timber, and when was it bought?

Ans. It was bought in Sept., 1902, and myself and W.E. Glass paid for it. Have you any evidences in your possession as to who paid for this timber, if so what, and file the same?

Ans. I have; it was paid for in three payments; it was all paid for by checks; the first payment according to my check-stub was paid Nov., 14th, 1902; I have not this check, I have lost it; the other two payments were made by checks, which I here file marked as ~~X~~ "K".

^{two}
The ~~two~~ foregoing question and answer are objected to because irrelevant, inadmissible and immaterial.

J.W. Orr for Pltffs.

Cross- Examination by Plaintiffs.

Q. 1. Please state how much poplar lumber was sawed from the C.V. Young yard, and what became of it?

Ans. There was sawed out of the C.V. Young timber about 300,000 feet *and a quantity of lye and ash vacuum* inclusive of mill culls. And of this R.C. Duff got 120,636 feet,

of it; Johnsons got the balance of it, except the mill-culls. They have given credit for about 127,000 to 128,000 feet of it, but they got 10,000 and odd feet more of it which no credit has been given for.

Q.2. How much lumber was sawed from the Smyth Stout land or timber and what became of it?

Ans. There was 75,468 feet in the log, and this was sawed up into lumber, except one log. The plaintiffs in this suit got the whole of it, except the mill-culls. It was culled very close.

Q.3. Who got the Ozro Young lumber?

Ans. Mr. R.C. Duff got what has been taken up. The other is scattered along the road towards Duffield.

Q.4. What amount has been taken up by Mr. Duff?

Ans. I do not remember how much he got; but Mr. Duff's deposition taken in this case for the plaintiffs show what there was of it taken up by him.

Q.5# About how much of the Ozro Young yard is scattered along the road towards Duffield?

Ans. I can not well tell how much there is of it, but I would guess there was some 20,000 to 30,000 feet of it. And this is intended for Duff also; we have it contracted to him.

Q.6. What became of the Edwards lumber, and how much was there?

Ans. I don't know how much there was of it. It belonged to J.P. Glass and I did not look after it.

Q.8. What became of the lumber manufactured at the Lockhart yard?

Ans. I don't know, but according to Johnson's book, he got it. It also belonged to J.P. Glass, and I did not look after it. I don't know how much there was of it.

Q.9. What became of the Wm. Horton lumber and how much was there of it?

Ans. I don't know. I had no interest in it. It also belonged to J.P. Glass and I did not look after it.

Q.10. What became of the lumber mentioned in your contract with the plaintiffs, dated July, 26th, 1902.

Ans. The plaintiffs got it, except the 3,000 or 4000 feet which

Letcher Horn got and the mill culls.

Q.11. What became of the lumber manufactred from the timber, Elk. Young, mentioned in the contract dated Oct., 10th, 1902?

Ans. The plaintiffs got it, except the mill culls.

Q.12. Did you have a saw mill set at Dry Creek, and if so what timber was sawed there?

Ans. I did have a saw mill set at Dry creek, and a part of the C.V. Young timber was cut there, and some custome stuff and some for myself. That was cut for myself was hauled from off my own land, and was poplar and oak and walnut.

Q.13. How much was there of the poplar and oak and so on sawed from timber from off your own lands at the Dry creek yard, and what did you do with it?

Ans. There was some 3,000 or 4,000 feet of poplar and hardly that much of the oak sawed from timber off my land. I used most of it for ^{my} own purposes.

Q.14. Did you and J.P. Glass or either of you, manufacture any other poplar lumber than that of which you have spoken, during the year 1902, and which you did not deliver to the plaintiffs under your contracts?

Ans, We did not, that I remember, except such as spoken of as having been gotten by Duff, Horn, the custom stuff and what I made for myself

Q.15. What prices did R.C. Duff undertake to pay you, for the lumber which you sold him.

Ans. He paid us \$11.00 for 4/4 ship culls, \$12/00 for 5/4 up to 8/4 ship culls, \$24.00 for commons and \$34.00 for ones and twos.

The foregoing question and ~~any~~ ^{the} answer thereto is objected to because the pleadings in this case is not sufficient to raise the question of damages; and because even it is raised by the pleadings the court does not have jurisdiction of the question of damages in this case, and because if the plaintiffs are entieled to damages for any breach of their contract with these defendants, the measure of damages is not what the defendants sold the lumber for, but from the market price of such lumber contracted at Pennington Gap.

E.W. Pennington for the Defts

Q.16. What is the date of the contract of sale of the lumber by you and J.P.Glass to R.C.Duff?

Ans. There was no contract made by me and J.P.Glass to R.C..Duff, but it was between me and W.E.Glass with him, and was made in some time in August, 1903, I think.

Q.17. When did you begin to deliver the lumber to Duff under that contract?

Ans. I think about the last of August or the 1st of Sept., 1903.

Q.18. Who was present at any time when you say you objected to the inspection^{and} of the gading of the lumber by A.Johnson, one of the plaintiffs.

Ans. I remember of^{no} one being present except Wm.Brummit who worked on the stacks of lumber with us. I now rememe a time or so my drivers coming around about the stacks.

Q.19. Do I understand you to state in your examination in chief, that there was no lumber inspected and taken up on the 1st, day of July, 1903, except that on your tally sheet, dated July, 2nd, 1903.

Ans. There was some other lumber taken up that day, that is July, 1st 1903. There was about 19,000 feet taken up on that same day^{and the day before} and before the amount was taken^{as is} up^{and} shown on said tally sheet heretofore filed with my deposition.

Q.20. Have you the tally sheet for the amount taken up before that shown on the tally sheet dated July, 2nd, 1903?

Ans. I have two sheets, which I think amount to about 19,938 feet. And I here filed the same as you request marked "Glass Tallies" dated June, 30th, and July, 1st, 1903. And I think they show all that was taken up on July, 1st, and June, 30th, 1903, and just before that was taken up as shown in tally sheet filed with my deposition in chief, and dated July, 2nd, 1903.

Q.21. Have you ever had any experience in inspecting and grading lumber, that is, have you ever been employed by any^{one} buying and selling lumber to inspect the same for them?

Ans. I have never been employed by any one to inspect and grade for them.

Q.22. Was there any material difference between the inspection made by Sam Stewart and Joe Lawson on the 300 feet which Lawson was called into inspect, if so how much?

Ans. There was 30 feet on the 1 & 2 s, and Lawson put some of it that Stewart wanted to put in the cull into the Common, I think there was one or two boards which Stewart threw out as mill culls which Lawson put in as shipping culls.

Q.23. By way of refreshing your memory, is it not a fact that Lawson only differed with Stewart on one board.

Ans. No there was more than one; the tally shows two boards on the 1 & 2s which Stewart wanted to put in to the Commons.

Q.24. did not the plaintiffs, request and urge you and J.P. Glass to deliver the balance of the lumber more than once before the institution of this suit?

Ans. Mr. Davidson came over to my place and said that they wanted me to bring it on to them.

Q.25. Did you not write to Mr. Johnson more than once requesting him to go ahead and take up some of the lumber, even in your absence?

Ans. Yes. But the reason I did this was because my objections did not seem to do any good when I was present.

Q.26. Did you not sell to Mr. L. Dotson a lot of lumber or contract the same to him about a year before you first contracted with the plaintiffs, and that you failed to deliver to said Dotson the same?

The forgoing question is objected to because even if it were true that the witness contracted with Dotson about lumber, and broke his contract, that is a matter with them, and has no concern with or among the parties to this suit, and is therefore irrelevant.

E.W. Pennington for Defts.

Ans. Some time before we contracted with the plaintiffs, I did contract with said Dotson some lumber, but how long before I can't say now. But I delivered all I made to Dotson, though it fell short of what I thought there was going to be of it, and for what the contract called for. It fell short, well - I can't tell how much.

Q.27. What lumber was this you contracted to Dotson, and from what

timber was it manufactured?

Ans. One yard of it ~~xxxxxxffxx~~ I bought the timber from Jim. Barker and Bradford Young, and the other yard came from off my own land.

Re- Examination by Defts.

Q.1. The plaintiffs allege in their bill, that you and your brother J.P. Glass are insolvent; State whether that allegation of their bill is true? I forgot to ask you this heretofore?

Ans. It is not a fact that we are insolvent. I am worth over and above my debts and liabilities about \$5000.00 to \$6,000, and is composed of real estate, goods, cattle, mules and horse, etc. My real estate is worth about \$7,000.00. There are no judgements against me.

Q.2. What per cent of the ~~xxxxx~~ C.V. Young yard was probably mill culls after it was cut?

Ans. I would say from ten to twelve per cent.

I owe about \$3000.00 on my real estate, perhaps a little more. The Larmer deed is made to me alone, and the Horton deed to me and my wife jointly. Every thing else is in my own name and not my wife's.

And further this deponent saith not.

L. J. Glass

*The further taking of depositions in this cause is
adjourned until January 25-th 1904. at same place.
James W. Orr, atty for Plffs.
E. H. Pennington for Defts*

Handwritten notes in right margin:
The money was paid to the bank of \$2.00 for the purchase of the cattle in this case is
the money was paid to the bank of \$2.00 for the purchase of the cattle in this case is

And further this dependent with not.
wife's.

L. G. Glass & J. P. Glass

advs. Depts.

W. L. Johnson

Filed Feb 4th 1904

H. C. F. Ewing clk.

L. G. Glass

J. P. Glass are insolvent; State whether that allegation of their bill
C. I. The plaintiffs allege in their bill, that you and your brother
Re- Examination by Depts.

and Bradford Young, and the other yard came from off my own land.
And, one yard of it xxxxxxxxxx I bought the timber from Jim Barker
timber was it manufactured?

The further taking of these dpositions resumed pursuant to the adjournment made on last Saturday at the same place as mentioned in the caption;and the Counsel of said plaintiffs not being present,but the plaintiffs being willing to proceed with the taking of these depositions,with the right to re-call the witnesses for cross-examition;and also with the right to the plaintiffs' counsel to enter objections to any question which may be asked,and when done to be of the same effect as entered as the depositions are taken. Given under our hands this the 25th,day of Jan.,1904.

E. M. Pennington

For the DeftSM

A. Johnson

W.E.Glass,a witness of lawful age after being duly sworn deposes as follows:

Q.(1). Give,your name,age residence and occupation?

Ans. My,name is W.E.Glass,26 years old,reside on Wallen's creek in Lee County,Va.,and Famrer,merchant,saw-milling and lumberman.

Q.(2). Are you acquainted with the parties to this suit?

Ans.I am; I am a brother to J.P.& L.G.Glass.

Q.3. Are you sufficiently acquainted with the rules of inspection to tell the various gardes of ~~xxxxx~~ poplar and oak lumber?

Ans. I am principally,I think.

Q.4. Were you acquainted with any of the lumber known in this suit as the C.V.Young,Ozro Young,Elkanah Young,Hinkle and Banner and Smyth Stout lumber;if so,how did you become acquainted with it?

Ans. I was acquainted with all that you mention,except the Stout the lumber,and[^]J.M.Flanary part of the Hinkle and Banner lumber.

~~XXXXXXXX~~ I helped to saw all the C.V.Young,lumber,except the mountain I helped to saw all the yard,and[^]the Ozro Young yard;and I helped to haul on all of it,except the J.M.Flanary part of the Hinkle and Banner yard. I helped to saw and haul to Pennington Gap the Elk.young lumber.

Q.5. How much experience have you had in sawing lumber, and handling it? If any?

Ans. I been handling it, hauling it, and seing it inspected for something like six years, and running a saw off and on for something like three years all tol d.

Q.6. Was any part of the Ozro Young yard delivered to the plaintiffs and taken up?

Ans. No.

Q.7. What became of the Ozro Young yard?

Ans. A part of it has been hauled to Duffield Va., and sold there and the balance of this yard is scattered along the road from the head of Wallens creek to Duffield, and I suppose there is something like 30,000 of this yard that has not been taken up by any one.

Q. 8. ~~XXXX~~ If you know into how many yards was the C.V. Young timbers sawed, and by what names were the yards known?

Ans. This timber was sawed into three yards, and was known as the Mountain yard, Ridge Yard and the Dry Creek yard.

Q.9. ~~XXXXXX~~ Were any or either of said three yards delivered to the plaintiffs in Pennington Gap, Va., and taken up by them? If so which ones?

Ans. One of them was, and that was the ridge yard.

Q.10. About how much was there in this Ridge yard, and how do arrive at the amount? that was delivered to the plaintiffs at Pennington.

Ans. There was about 170,000 to 175,000 feet of it in the log, and the whole of the lumber made from these logs, except the mill culls was brought to the plaintiffs mill at Pennington Gap, and I suppose was taken up by them. I saw them taking up a part of it. There was included in the above amount of logs, the logs which we got from Elk. Young, and there was some where between 18,000 and 20,000 feet of the Elk. Young logs.

Q.11. While sawing said lumber from said Ridge yard, state whether as possible you sawed as much, of it in 1 X 6 and multiples of sixes, as you could without lowering the grade of the same?

Ans. Yes, I did so, while I was sawing; I guess I sawed one-half of

the Ridge Yard or more. I understood the contract which J.P. & L.G. Glass had with the plaintiffs required as much of the timber to be sawed into 1 X 6 and multiples of sixes as could be done without lowering the grade of the lumber, and I done that as best I could.

Q.12. While you were running the saw state whether you manufactured any 4/4 X 6 Inch clear boards out of said timbers; if so what per cent of the opelar was cut in that way would you say?

Ans. There were some of it cut into 4/4 X 6 inches, and I would say that as much as 6 to 8 per cent of it the whole was cut clear boards. I mean by a clear board one that has no defects, and is all yellow poplar.

Q.13. You have said you saw the plaintiffs taking up a part of the Ridge yard; state if you remember, if you noticed them coming on to any 4/4 X 6 Inch boards that was clear; If so, what did they grade them?

Ans. I saw Sam Stewart grade such boards as commons. He also put some ~~4/4 X 6~~ 4/ X 7 inch clear boards into the common.

Q.14. Who else was present when you saw Mr. Stewart putting 4/4 X clear. 6 & 7 Inch boards into the common, if you remember, and what was said about it ~~if~~ if any thing?

Ans. L.G. Glass and Jim Beboe were present I think; and I heard L.G. Glas objecting to such grading, but Stewart paid no attention to his objections. I think I saw this about twice. I think it was along in the last of July, or the first of Aug., 1903, that I heard and saw what I have told about.

Q.15. Please state which of the yards of lumber of which you have spoken about was the best quality, if you know, and how much the best if you have some idea?

Ans. The Ridge yard, which we hauled to the plaintiff's was the best of it all that I was acquainted with. I think the Ridge yard was ^{better} from \$1.50 to \$2.50 than the Mountain yard and Dry creek yard per thousand feet; and I think the said Ridge yard was \$2.50 per thousand better in quality than the Ozro Young yard

Q. 16. If ^{you} noticed, as to what the plaintiffs did with the lumber which they were getting from the defendants, after it was graded please tell?

Ans. I ^{don't} know as noticed what they were doing with it.

Q. 17. Did they pile it away promiscuously, or keep the various grades separate, if you remember?

Ans. I think they kept the grades separate, - seemingly they did.

Q. 18. What per cent of the whole of the lumber which Johnsons got out of the Ridge yard was 7 inch clear boards, would you say?

Ans. There was not a geart deal of it ; i would say from 2 to 3 per cent of it.

Q. 19. State if you know whether your brothers L.G. & J.P. Glass were ever partners in any business, if so, in what? and how and when did you get your information?

~~XXXX~~ Objected to because, *irrelevant and immaterial, and question 15 and the answer thereto, and all other questions & answers comparing the different yards of lumber as to quality are excepted to for the same reason, and also all enquiries as to the formation of partnerships, between the defendants and between L. G. Glass & W. C. Glass are excepted to for the same reason.*

James W. Orr, for Plffs.

Ans. They~~x~~ were partners in a saw-mill, a little store, the C.V. Young Smyth Stout timber, and the Ozro Young timber; they were partners in the same saw-mill that sawed these yards. I heard both of them say they were partners in the things I have just mentioned, and I heard them talking about being partners off and on while they were partners, which was some time in the year 1902. They desolved partnership as I understood from them both along about the first of Sept., 1902.

Q. 20. After J.P. & L.G. Glass had dissjlvled their partnership, state whether L.G. Glass took in with him and other partner in any other business; if so, who was is it he took in with him, and in what business as partners?

Ans. Something like a month after J.P. & L.G. Glass dissolved, I went

in with L.G.Glass as partner on the ~~timber~~ C.V., and Ozro Young timber; soon after this I bought a one-half interest in the saw-mill which he and brother J.P. had owned as partners; we also as partners bought some timber from Elk.Young, but just at what time we bought the Elk.Young timber I don't remember; it was not very far from the time we went into partnership that we bought the Elk.Young timber.

Q.21.

~~Ans.~~ Before or after you become interested in said saw-mill state whether there was put on the same a new shaft, belt, collar and pulley; if so, when?

Ans. There was not; some little time after I became interested in the mill, a new four ply, six inch wide, and forty feet long gum belt for the edger was gotten, which I understood ~~came~~ came from the plaintiffs. I think, the belt was brought to the mill by some one of our teamsters, but who I don't remember now. I think, both myself and L.G.Glass told them to bring it.

So much of the foregoing answer which undertakes to tell the understanding of the witness is objected to, because hearsay. *arr-for Riffs.*

Q.22. What was that belt reasonably worth, if you know?

Ans. It would have been worth from \$6.00 to \$8.00. A short time ago I bought the same ply and same width belt and 19 1/2 feet long which cost a little over \$3.00. I just don't remember the cents over three dollars that it cost.

Q.23. I notice in the account filed with A. Johnson's deposition the plaintiffs have charged to the account of yourself and L.G.Glass a note due in 90 days ~~and~~ as of July, 21st, 1903 and for \$510.00; state whether this charge is proper in whole or part?

Ans. ^{had} It all a proper charge except for \$10.00. We wanted cash, and Miss Myrtle Johnson who was then conducting the business said they did not have the money, and we consented to take a ninety day note, and the ten dollars was added for the discount which we would have to pay in order to get ~~the~~ \$500.00 in cash. So \$10.00 ought to be credited to this account against us.

Q.24. State whether in July, or Aug., 1903 you saw Wade Ellison give to C.C.Duglass any tallies of any lumber, if so state all you may know about it?-

Ans. About the last of July, or the first of August, 1903, L.G. & myself came to Johnsons store and ^{L.G.Glass} called ~~for~~ to Wade and said he wanted ~~xxxx~~ ^{those} tally boards, and Wade Ellison got them, but from where I don't know, and handed ^{them} them to L.G.Glass; and then L.G.Glass and I went on out on the front porch of the store, and C.C.Duglass stepped up and then L.G.Glass tore a tally from off one of the boards and handed it to Mr.Duglass, and then Duglass went back into the store with ~~xxxxxxx~~ the talley, but I don't know what Duglass did with it I saw the sheet and it had tallies on, pretty well marked all over; it had enough tallies on the paper to look like it ought to have been considerable. I don't remember having the sheet in my hands. I don't know whether they had a clerk or not about the lumber business. Wade Ellison was clerking in the store.

Q.25. State whether J.P.Glass had any interest of any kind in the Elk Young timber of which you have spoken about?

Ans. He did not.

Excepted to as inadmissible because in conflict with written statement of W.C.W. for Dep.

Q. 26. At any time when you were present while any of the lumber was being taken up by the plaintiffs or their agents, state whether they made any complaints about the manner in which it sawed?

Ans. None in my presence.

Q.27.

W. E. Glass

31

The deposition of W.H.Sage a witness of lawful age after being duly sworn,deposes as follows:

Q.1. Give you name agre residence and occopation.

Ans. My name is W.H.Sage, I am 21 years old, reside on ~~XXXXXX~~ Blackwater, Lee County, Va., and farming mostly now.

Q.2. Have you ever had any experience with poplar lumber, if so how much? and in what way.

Ans. Yes. I have hepled to saw, stacking it, running the edger, and hauling it on wagons.

Q.3. State whether you worked at the mill while the Smyth Stout timber was being sawed into lumber, if so, what did you do?

Ans. I did, I run the edger some, stacked lumber principally

Q.4. State whether you worked at the mill while the C.V.Young and Ozro Young timber was being sawed into lumber, if so what did you do?

Ans. I Worked at the mill at ~~two~~ of the yards of the C.V.Young timber, at the Mountain and Ridge yard. I did not work at the mill at the Dry creek yard and the Ozro Young Yard. I stacked lumber and run the edged at the two yards mentioned at which I worked.

Q.5. Would the mill run on while the lumber was being stacked?

Ans. Some times it would stop and sometimes it would run on.

Q.6. Which was the better lumber in your opinion the Smyth Stout lumber or the Ridge C.V.Young lumber?

Ans. The Stout lumber was the best?

Q.8. Which was the better lumber the Ridge C.V.Young lumber or the mountain yard of the C.V.Young lumber?

Ans. Thr ridge lumber of the C.v.Young lumber was the bbest.

Q.9. While the lumber was being sawed at the two yards which you worked ~~at~~, state whether you noticed any 4/4 X 6 and 7 inch boards being sawed

Ans. I did.

Q.10. What per cent of the same would you say was sawed into 4/4 X

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Cross examination by the plaintiffs.

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there is in a pile of lumber, without seeing both edges, and both sides

33
Ans. No;nor no one else.

Q.8.

And further this deponent saidh not.

W. H. Sage.

Present E.W.Pennington for the defendants,
" J.W.Orr for the plaintiffs.

J.P.Glass after being duly sworn,deposes as follows;

Q.1. Give your name,age residence and occupation?

Ans. My names is J.P.Glass,I am 34 years old,reside on Wallen's Creek, Lee County, Va.,and Merchandising principally,farm some,and deal also in lumber.

Q.2. Have you any connection with this suit,if so what?

Ans. I am one one of the defendants to it.

Q.3. State whther you and your brother L.G.Glass were ever partners in any business,if so what?

The foregoing question is objected to because irrelevant and immaterial. J.W.Orr for the Pltffs.

Ans. We were partners in a mercantile business,saw-mill and some for a while lumber. We were partners,in the mill at the time and that sawed the C.V.Young,Ozro Young,Elk.Young,Smyth Stout and Hinkle and Flanary timbers .We were also partners in the Smyth Stout,C.V.Young and Ozro Young timbers. We were not partners in the Hinkle,Elkanah Young, and J.M.Flanary timbers.that belonged to L.G.Glass,a part of it,and a part of it to L.G.and W.E.Glass;the Lockhart,Horton and Edwards timber and lumber made therefrom was mine individually L.G.Glass had no interest in it. L.G.Glass and myself formed our partnership as best I remember in Dec.,1901 ,as to said saw-mill, store,and C.V.Young,Ozro Young,and Smyth Stout timber;our partnership continued until,as I remember,until in the first part of Sept. 1902,at which time we dissolved it.

This answer further excepted to because in conflict with the written contractswhich are the best best evidence and can not be varied by parol evidence. J.W.Orr,for the Pltffs.

Q.4. State if you know whether Mr.Johnson was informed or knew

of your partnership with L.G.Glass at or before the contract of Jan.,3rd,1902 was entered into?

~~ANSX~~ The foregoing question is excepted to for the same reasons above sated.

J.W.Orr,for Pltffs.

Ans. He knew at the time we entered into said contract that we were partners on ly in the C.V.Young,Ozro Young and Stout stuff; and he also ~~knew~~ that we were not partners in the Lockhart,Horton and Edwards timber and lumber.He knew how this matter was because we talked it over to him,that is to Johnson,and explained to him in what part we were partners and in what part was mine individual-ly.

Q.5. If you were not partners in the Horton,Lockhart and Edwards timbers and lumber,tell why you entered into one contract jointly for the whole thing,if you can?

Ans. It was done^{that way} to save time in writing two contracts.

Q.6. State whether you delivered to Johnsons,the plaintiffs,in this case any part of the Lockhart yard,if so how much?

Ans. I did deliver to them the whole of that yard,which was about 60,000 feet in all.

Q.7. State whether you delivered to the plaintiffss any part of the Horton yard,if so how much?

Ans. I did deliver to them the whole of that yard,which was about 52,374 feet.

Q.8. State whether you delivered to the plaintiffs any part of the Edwards yard,if so how,and tell all about this yard?

Ans. I put all the poplar from this yard on the plaintiifs yard in Pennington Gap,and a little of the oak,some time in ~~August~~ the summer,as I remember,but at any rate I think before this suit was brought;may be a few loads of it was brought after the suit was brought.The next thing about it,this suit was brought,and then we executed a bond of some kind before the Clerk of this ~~suit~~. Some time in the latter part of Sept.,1903 my wagoners brought me a note from Mr.Johnson about taking up this Edwards lumber.In a short time

after this I met Mr. Davidson who gave me another letter, which letter is the same one filed with Mr. Johnsons deposition, and dated Sept., 28th, 1903. I came on, on that same day to Pennington Gap, and met up with A. Johnson between the depot and the roller mill in said town; he asked me when we would take up that lumber, I replied to him that we would not take it up at all; that I did not intend for him to measure another board of it. We then parted and we never talked about any more.

Q.9. Well, what became of this Edwards lumber if you know, after this?

Ans. I don't know myself, except from what I have heard about it. I got a statement from them to the effect that they had taken it up, and I suppose they did get it.

Q.10. State whether you ever authorized the plaintiffs, their agents or any one else for them to take up this Edwards lumber?

Ans. I did not.

Q.11. State whether you ever had any other notice than what is contained in said letter filed with Johnsons' deposition, that they intended to take it up?

Ans. I had no other notice of a later date than Sept., 28th, 1903, the date of said letter.

Ans. State whether you ever consented for the plaintiffs to take it up, after ~~xxx~~ suit was brought?

Ans. No.

Q.13. You have stated that the whole of the Horton and Lockhart yards were delivered and taken up by the plaintiff's; state whether they ever made any complaint to your knowledge as to the manner in which it had been sawed?

Ans. They never made any to me, nor did I ever hear of any as to the manner in which it was sawed.

Q.14. Who was the sawyer or sawyers that sawed the said Lockhart, Horton and Edwards yards?

Ans. J.F. Key was the sawyer.

Q.15. How did he saw it, if you remember?

Ans. He cut it various ways; I instructed him to cut it into 1 x 6 and multip

and multiples of sixes as much as he could without lowering the grades, and he did so, so far as I saw, and I was about the mill a good deal of the time while they were sawing.

Q.16. Were you present when the said three yards were being inspected and graded?

Ans. I was present on ly a part of the time; I was present when the mosts if not all of the Lockhart yard was being inspected; but I was present only a part of the time while the Horton yard was being inspected; I was not present at any of the time while the Edwards yard was being taken up by them.

Q.17. While you were present, ^{when this lumber was being taken up} state whether you noticed any 4/4 X 6 inch clear boards; if so, in what grade did the plaintiffs put them, if you know?

Ans. I noticed a great many of such boards while said lumber was being inspected by Mr. Johnson principally, and he put the principal part of such boards into the commons.

Q.18. While he was so grading your lumber, and putting 4/4 X 6 inch clear boards into the common; state whether ^{you} ~~he~~ consented for him to do so?

Ans. I did not consent; we jowered along about it, but he kept on so measuring and inspecting.

Q.19. Do you know the rules for grading and inspecting poplar lumber?

Ans. I think, I do. I have been engaged for about thirteen years in sawing, buying, selling and handling it, and I have inspected a right smart chance of it in the time I have been engaged in it.

Q.20. The plaintiffs have charged to your and L.G. Glasses account some poplar siding, ceiling, moulding; state whether that is a proper charge against you two jointly?

Ans. They are not, a proper charge to our joint account.

Q.21. The plaintiffs have charged to yours and L.G. Glasses account as of July, 27th, 1902, for Handling lumber, \$5.73, and as of Aug. 19th, 1902, Time Handling lumber, \$4.00; state whether these two items are correct charges against you and L.G. Glass; if not, why not?

Ans. They are not I don't think proper charges against us; we were simply to deliver the lumber to them at their mill in Pennington Gap,

there was nothing said about in the contract as to who was to pay for the labor necessary in inspecting the lumber;and I think at one time I called Mr.Johnson's attention to the first charge,and told him I did not think we ought to pay it,and he simply laughed and said we would not fall out about it. I don't remember any thing else being said between he and I about these charges. We settled on the Lockhart yard,and I don't we figured either of said two charges in our settlement about that yard.

Q.22. State whether Sam Stewart ever inspected any of your lumber,if so,about ~~kw~~when and on what yard of the same?

Ans. He did inspect some of the Horton yard;but I can't say just when it was he did the work?

Ques.Sate whether said Stewart correctly inspected the lumber which he graded.

Ans. He did not; he would call my 1 & 2s common and my common cull, and we fussed about it,until finally I left the lumber and told him if he was going to steal my lumber,I would go to town and get a cegar;that I did not want to see him take my lumber before me own eyes. This happened along about the finishing up of the Horton yard.

Ques. 24. Have you seen the figures of the amounts of the lumber for which the plaintiffs have measured and inspected the Edwards yard;if so,state whether you think they show enough;if not why do you so think?

Ans. I saw the statement which they sent me as to the amount,and the grade which they gave of it.It fell short in both quantity and grade considerably to what I was expecting it to be. There was a little over 43,000 feet of this in the log,as I remember,and we assorted it out before we took it to Pennington Gap,and from what was left on the yard,it fell short considerably.And the reason I think it fell short in grade was I inspected one rick of it on the yard where it was sawed,which I thoughtwas an average rick, and it showed the Common grade to be more than the cull,and about ten per cent of the rick run 1 & 2s. There was between 8,000 and 10,000 feet

Q.25. State whether you knew the Smyth Stout yard of lumber,if so, what per cent of it,if properly graged and inspected should have been 1 & 2s,what per cent commons and what shipping culls?

Ans. I was acquainted with this yard to some extent;I helped to saw
some of it;I saw most all the logs before they were sawed up;they
were a good class of logs;and I think a fair job of sawing was done
on it,as good as any country mill could do;and what I sawed of it
I cut as much of it as possible into 1 X 6 inch and multiples of
sixes,so as not to lower the grade. And from what I saw of the whole
after taking out 10% for mill culls,the rest ought to have run
thing,I would ~~xxx~~ think as much as 25% ~~xxxxxx~~
~~xxxx~~ 1 & 2s;50% commons,ship culls the balance.

Q.26. Did you ever tell Mr.Johnson you were well pleased with the inspection which he was giving you;if so,when and where and at what stage of the inspection was^{it}you told him that?

Ans. I did tell him at one time at his store house in Pennington Gap that I was reasonably well pleased with his inspection which he was giving me; and this was along about the first days work we did in taking up the Lockhart yard which was the first yard that was taken up.

Q.27. Did he continue to give you the same inspection and grades as you advanced in taking your lumber up as on the first inspection?

Ans. I don't consider that he did. He gave me harder grades the further we went along;and finally he got to grading and inspecting my lumber harder than any standard rule would admit;even the next day after the first he began to give closer and harder inspections until he went over the rules as I understand them.

Q. 28. Did you inspect any of the Lockhart yard before it was hauled to Pennington Gap to the plaintiffs; if so, how did your inspection hold out with the inspection given you by the plaintiffs.

Ans. I did inspect one of what I thought was an average rick of the Lockhart yard, and when the whole yard was taken up by the plaintiffs the inspection which I made and that made by the plaintiffs figured out very close together.

Q. 29. Are there any judgements or liens against any of your property?

Ans. No; not that I know about.

Q. 30. What are you worth above your debts and liabilities?

Ans. I think from 4,000 to \$5,000.00.

Q. 31. In making up your statement as to the percentage of the Smyth Stout lumber, in the 1 & 2s, state whether you included in your estimate of the percentage the 1 X 6 inch clear boards; if so what per cent of the 1 & 2s would you say was 4/4 X 6 inch clear boards?

Ans. I included in my estimate when I said 25% of the Stout lumber ^{the} should be 1 & 2s, 4/4 X 6 inch clear boards; and from what I saw of this lumber, I would say about 8% per cent of the 25% would have been 4/4 X 6 inch clear boards.

Cross-examination by the defendants:

Q. 1. Have not you and the plaintiffs fully settled as to the Lockhart and Horton Yard, if so when?

Ans. We settled on the Lockhart; we have not settled on the Horton yard; he, Johnsons figured up himself what they said was due on the Horton yard, and sent me a check.

Q. 2. You say you delivered all the poplar from the Edwards yard and some of the oak; please state how much poplar and how much oak?

Ans. I never measured either of them. I only measured the logs before it was sawed.

Q. 3. How much of the Edwards yard was left on the yard and not delivered to the plaintiffs?

Ans. I have never measured it, so I can not tell; I would guess some 6,000 to 8,000 feet of ^{will call} ~~the~~ poplar, and something like, - I have no idea much, but there was some oak not delivered.

Q. 4. You speak of having received from the plaintiffs, ^{letter} in reference to the taking up of the Edwards lumber, the first of which is not filed, but the second is; have you the first, if so file the same marked "Letter".

Ans. I have the letter, and here file the same as requested. It is dated Sept., 25th, 1903.

Q. 5. Did you attend at Pennington Gap on the First day of Oct., 1903 for the purpose of taking up the lumber as notified by A. Johnson in his letter dated Sept., 28th, 1903?

Ans. No. I was here the next day after it was written.

Q. Had any of the Edwards lumber been taken up before the institution of this suit, if so how much.

Ans. No.

Q. 7. What experience have you had in the inspection ~~of~~ and grading of lumber for market.

Ans. I have graded for different parties in the country, but never graded any that was shipped on my grade. I believe all I ever graded was regraded. I graded a yard in Scott county and P.W. Bevins regraded it and there was only 18 feet difference between, and he made the grade practically the same, -only a few feet difference.

Q. 8. Can a person inspect and grade lumber correctly without an examination of each board?

Ans. No. And he has to look at both sides of the board at that.

Q. 9. Were you ever employed by any company buying and shipping lumber to inspect lumber for them?

Ans. No.

Q. 10. In grading the two ricks of lumber spoken of by you, one at the Lovkhart yard and the other at the Edwards yard, did you examine each board carefully, or only look at the rick?

Ans. I looked at each board, measured it and done this for the purpose of seeing how much there was of it and its quality.

Q. 11. In reference to the two charges against you and L.G. Glass by the plaintiffs one of \$5.73 and the other of \$4.00 for handling lumber, were these charges for handling the lumber for the purpose of inspection

of inspection or for handling the lumber in putting it at properr places on the yard for inspection?

Ans. I don't know.

Q.13. Do you know whether the teamsters always unloaded the lumber at the proper place on the yard.

Ans. I suppose they did; I always found it where they told me where they had put it; but I don't know where the proper place was. It was on the mill yard, however.

Q.14. You state in chief that there are no judgement liens against you, and that you are worth from \$4,000.00 to \$5,000.00 over and above ^{your} ~~my~~ debts and liabilities; please sstate in what your property consists?

Ans. Prinicipally personal property, a saw-mill, merchandise, ~~xxxxxx~~ lumber, live stock and debts due me. I have no real estate.

Q.15. Are there not some suites pending against you which you hope to beat, but may perhaps involve you?

Ans. There are two, but I do not think either will amount to much.

Q.16. How much do the statements sent you by the plaintiffs show the Edwards lumber amounted to that you delivered to them?

Ans. I have ~~gax~~ ~~xxx~~ not got them all; but I think there was in all poplar, oak and chestnut about 30,185 feet. I get these figures from the statement "A" filed with L.G.Glass' depositions.

Q. 17. Did you or L.G.Glass sell any of the Edwards lumber to any person, other than the palintiffs, and if so to whom and how much?

Ans. I sold some of the oak to M.L.Dotson, but I don't know how much there was of it, he got from 15,000 to 17,000 of oak coming from that yard.

Q.19. Did you and L.G.Glass or either of you saw any poplar lumber during the year 1902 other than ~~than~~ the poplar lumber mentioned and in some way accounted for as being sawed at the diferent yards mentioned in the contract between you and L.G.Glass and the plaint iffs .

Ans. Nothing outside of what is mentioned in one or the other of said three contracts, except a little custom stuff. Custom stuff is where

persons bring in their own logs to the mill and have them sawed for their own use.

Q.20. Do you know how much lumber was sold to R.C. Duff at Duffield
Ans. I do not. I was not concerned in their trade.

Q.21. You say you was not concerned in the lumber which Duff got was it not embraced in yours and L.G. Glasses contract with the plaintiffs?

Ans. If it came from the yards mentioned in our contract I was concerned in it, as I signed the contract at first, but we had dissolved at the time Duff bought it.

Q.22. Did you not saw some gum lumber and haul it to the plaintiffs and claim that it was cucumber?

Ans. I don't remember ever sawing a log of gum lumber in my life.

Q.23. What kind of lumber was it the plaintiffs objected to receiving, because not of any of the kinds which they had contracted for from you and L.G. Glass.

Ans. Johnson pronounced it black gum, and therefore objected to it. We piled it out by itself, and later on I sold it to him by the pile.

And further this deponent saith not.

John P. Glass

It is agreed that the foregoing depositions of L.G. Glass, J.P. Glass, W.E. Glass and W.H. Sage shall be read as evidence in this case without the formal certificate of an officer authorized to certify the same, the witnesses having been sworn to before E.W. Pennington, Judge of the County Court for Lee County, Va.

This Jan., 26th, 1904.

James W. Orr Atty. for the Pltffs
E. W. Pennington Atty for the Defts.

Atty for the Defs.

Atty. for the Pliffs

This Jan., 28th, 1904.

Fernington, Judge of the County Court for Lee County, Va.

Certify the name, the witnesses having been sworn to before E.W. case without the formal certificate of an officer authorized to Glase, W.H. Glase and W.H. Sage shall be read as evidence in this

It is agreed that the foregoing depositions of L.O. Glase, J.P.

and further this document shall not.

We dissent if not by itself, and I ask for I sold it to him by the bill.

Ans. John M. pronounced it plain gum, and therefore objected to it.

Ans. L.O. you and L.O. Glase.

Ans. because of any of the kinds which they had contracted

Ans. that kind of lumber was it the plaintiff objected to no-

Ans. I don't remember ever sawing a log of gum lumber in my life.

Ans. I don't think it is gum?

Ans. I did you saw some gum lumber and haul it to the plaintiff

Ans. solved it, so the drift bought it.

Ans. concerned in it, I signed the contract at first, but we had dis-

Ans. It came from the yards mentioned in our contract was,

plaintiffs?

Ans. It was embraced in yours and L.O. Glases contract with the

Ans. You say you are not concerned in the lumber which Drift got

Ans. I do not. I was not concerned in their trade.

Ans. Do you know how much lumber was sold to R.O. Drift at Driftfield

for their own use.

persons bring in their own logs to the mill and have them sawed

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The deposition of J. Floyd Keag taken at the law office in the ⁵Town of Jonesville, on the first day of February, 1904 to be read in evidence on behalf of the defendants in a certain suit in chancery pending in the Circuit Court for Lee County, Virginia, wherein the Pennington Lumber Company, plaintiff, J. P. and L. G. Glass are defendants, which depositions are taken by agreement of the counsel for said parties without notice, and by agreement that James W. Orr, a commissioner in chancery for the Circuit Court for Lee County, Virginia, and of counsel for plaintiffs shall administer to the witnesses the formal oath, and depositions to be read without certificate.

PRESENT: James W. Orr for plaintiffs,
R. L. Pennington for deft.

J. Eloyd Keag being first duly sworn deposes and says:

Q1. State your age, residence and occupation?

Ans. A e 43, residence on Wallens Creek Saw milling.

Q 2 Are you a practical sawer?

Ans. I am a pretty good sawer.

Q 3 How long ha e you been following sawing as a business.

Ans. I have been folowing it about 18 years.

Q 4 Are you acquanited with the grading of lumber as it is ordinarily graded in this country.

Ans. I never followed grading any but know what the grades are.

Q 5 are you acquaninted with J. P. and L. G. Glass.

Ans. I am.

Q 6 Did you sa w for them? some lumber siruated at what is known as the Lockhart yard and Horton yard on Wallens Creek, and the Edwards yard on Powell's river?

Ans. Yes I sawed that lumber with my mill.

Q 7 Did you act sawyer yourself?

Ans. I did.

Q 8 While you were sawing these yards did you observe the kind anf quality of lumber that was being manufactured from the timber at these several sets?

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Ans. Yes I observed the kind and quality of lumber that was being manufactured.

Q 9 About how much per cent each did the Horton yard run of ones and twos commons shipping culls and mill culls of the poplar lumber?

Ans. I would put the first and second about 11%, commons about 44%, shipping culls about 35%, mill culls about 10%.

Q 10 What would you say that the Lockhart yard should have graded?

Ans. I think it would fall 2% below on ones and twos lower than the Horton yard.

Q 11 What would be your estimate on the Edwards yard?

Ans. I think it would fall about 3% below the Horton yard.

Q 12 Do you remember to have been given any directions about cutting this lumber into six inch board and multiple of six?

Ans. I was instructed by Glasses to cut in that way, that is to cut it that way without lowering the grade.

Q 13 Did you try to comply with the orders of Mess. Glass in this respect?

Ans. Yes Sir.

Q 14 In cutting of the said lumber did you note any six inch boards that were in grade ones and twos excepting the fact that they were six inch boards?

Ans. We cut clear boards ones and twos except in width according to the regular grading.

Q 15 About what per cent of these clear boards six inch wide do you think would have been contained in these three sets of lumber?

Ans. I can't tell anything about that I have no idea. It would be impossible to estimate it. I know that there were boards of that character but could not say how much.

Q 16 From your present recollection could you say there were only a few six inch clear boards, or were there in the whole three sets of lumber a good many such boards.

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Ans. There was a good many such boards.

Q 19 Was there anything said to you about this character of boards which caused you to notice it, and if so what was it?

Ans. Mr. Glass told me that a six inch board went as first class when it was clear and possessed the other qualifications.

Q 20 C R O S S E X A M I N A T I O N .

by
James W. Orr.

Q 1. Did you ever inspect and grade any lumber for market so as to be a good judge of what grade any certain boards would go into on such inspection?

Ans. I never graded any lumber that is for market, and all I know is what other men have told me about what is first and second grade lumber, and what I have seen others do in grading.

Q 2. Is it not a fact that in cutting the lumber you cut into boards wider than six inches as a general rule when the log would permit it?

Ans. Yes, sir I would cut it wider when the log would permit it.

Q 3 Please state what are the multiples of six inch boards in sawing lumber?

Ans. My understanding is that we cut it six, twelve and twentyfour. &c.

Q 4 Do know ^{it} what became of the lumber that was sawed at these three yards?

Ans. No sir.

Q 6 Do you know ^{of} John P. Glass selling any lumber from these yards in the neighborhood or to any person other than the plaintiff?

Ans. No sir, I do not know that I do.

Q 7 Have you any idea ^{how much} of the poplar cut at these three yards was cut into eight quarter stuff?

Ans. I have no idea. I do not believe there was very much. altho' there was some.

Since thinking the matter over I do not believe there was any cut that way.

Q 8 What per cent of six quarter stuff was cut?

Ans. I have no idea. But there was some cut that way.

Q 9 How much was cut five quarter?

Ans. There was very little if any.

Q 10 And further this witness sayeth not.

Attendance claimed, Sworn to before me this Feb. 1st, 1904.

50¢.

J. H. Keyes

James W. Orr, Jr. Clerk

*Stenographer - for things deposited No. 75 -
Paid by John O'Hara.*

L. G. Glass & J. P. Glass.

ads & Depts.

A. N. L. Johnson.

Filed Feb 8th 1904.

H. C. T. Ewing Clark

L. G. Glass 1 to 24

W. E. Glass. 24 to 31

W. H. Sage. 31 to 33

J. P. Glass. 33 to 42

J. H. Keys. 42 to

I, W.E. Glass, a citizen of Lee County Va., do hereby make oath as follows:

That I am a brother to J.P. and L.G. Glass and am acquainted with their property generally, that I believe the real estate of the said L.G. Glass to be reasonably worth the sum of \$3000, and that he is worth over and above his debts and liabilities in personal property at least \$1000; that I believe J.P. Glass is worth in personal property at least \$3000.

I am also acquainted with the lumber mentioned in the contract sued on in the case of A. and N.L. Johnson, having sawed about two thirds of it and hauled some of it, and have been informed of the grade it received upon measurement, and I am reasonably sure that the same was graded too low.

Given under my hand this the 12th day of Sept, 1903.

W. E. Glass

Virginia, Lee County, to wit:

I, C.E. Couk, a notary public in and for the county and state aforesaid do hereby certify that W.E. Glass, whose name is signed to the foregoing affidavit this day made oath before me that the statements in the foregoing affidavit contained the truth to the best of his knowledge and belief.

Given under my hand this the 12th day of Sept, 1903.

C. E. Couk M.P.

L. G. Glor et al -

ads. ³ Offe don't

at N. L. Johnson

Filed Sept 18, 1903

H. A. W. Shaw
Judge

I, J.P. Glass, one of the defendants in the suit recently instituted against me and L.G. Glass by A. & N. L. Johnson, do hereby make oath that I have heard the answer prepared in said cause for us read and so far as the statements made therein are made upon my own knowledge they are true and so far as made upon the information derived from others I believe them to be true.

I also make oath that I am not insolvent but am worth at least \$5000 over and above all my indebtedness.

I also make oath that I was present when a large part of the lumber was delivered and graded under the said contract, and I know that the same was not properly garded under the said contract.

Given under my hand this the 12th day of Sept, 1903.

J. P. Glass

Virginia Lee County, to wit:

I, C. E. Couk, a notary public in and for the county of Lee and State aforesaid do hereby certify that J. P. Glass this day made oath before me that the statements in the foregoing affidavit are true to the best of his knowledge and belief.

Given under my hand this the 12th day of Sept, 1903.

C. E. Couk N.P.

L. G. Glor et al
add $\frac{3}{3}$ off don't.

A + N. L. Jones saw -

To the Honorable H. A. W. Skeen, Judge of the circuit court for Lee county, Virginia:

The undersigned, in pursuance of a decree entered in the cause of "A. & N. L. Johnson vs. L. G. & J. P. Glass" by the said court, on the 19th day of May, 1904, a copy of which is hereto attached, having given due notice to the parties, or their counsel, as required by the said decree, proceeded on the 8th day of September, 1904, to execute the said decree, and the proceedings having been thenceforward regularly adjourned from time to time, and being at length completed, the result is here reported as follows:

The following extract from the said decree will give the duties required to be performed by me:

"It is therefore adjudged, ordered and decreed that L. T. Hyatt be and is hereby appointed a special commissioner for the purpose, who will, after giving the parties, or their counsel, ten days notice of the time and place of his sitting, take and state the account between the plaintiffs and defendants charging the defendants with all moneys, notes, checks and merchandise properly chargeable to them on their joint account, and showing for what purpose and upon what lumber the same was paid or advanced to said defendants, and he will also give the defendants credit upon such account for any and all payments made, or lumber delivered by them; and he will report any other matter, or fact, deemed pertinent by himself or specially required by either party in this cause; and he will report in writing to this court his findings with the evidence upon which he bases his conclusion and report, and in making his enquiries and report, said commissioner will read and consider the depositions, and exhibits filed therewith which have already been taken in the cause."

On the 8th day of September, 1904, the defendants took before me the deposition of Wade H. Ellison, which deposition I reduced to writing, and I return the same herewith.

On the 9th day of September, 1904, the plaintiffs took before me the depositions of J. T. Whattaker and P. T. Early, which were also reduced to writing by me, and are herewith returned.

On the 25th day of November, 1904, the defendants took before me the depositions of Henry Chafin and Eli Million which were also reduced to writing, and are herewith returned.

Counsel for both plaintiffs and defendants were present at the taking of all the foregoing depositions.

On the ____ day of _____, 1904, the plaintiffs took before me the depositions of R. R. Early and M. N. Offutt, which I also reduced

to writing, but by some means unknown to me this batch has been misplaced or lost, or at any rate I do not now find them among the papers of the cause or in my office. Doubtless they are in the offices of some of the lawyers in the case, and will turn up before court.

On the ____ day of February, 1904, the case was argued before me by J. C. Noel, of counsel for plaintiffs, and Judge E. W. Pennington, of counsel for defendants. Judge Pennington also filed before me a written brief, and plaintiffs counsel have referred me to numerous authorities.

In making up my report I have read and considered the evidence which had been taken in the case before the same was referred to me, except that I did not consider the deposition of T. J. Asker.

I found the books of the plaintiffs, or rather the copies of accounts made therefrom, in a very confused and complicated condition, and the defendants seem to have kept no books at all.

I have made up and file herewith a statement of the account between the parties marked "STATEMENT "A" WITH REPORT", which is as nearly a correct statement as I am able to make with the evidence before me. According to this statement, it will be seen that the defendants are due the plaintiffs the sum of \$1736.79, on which I think interest should be charged from September 1st, 1903, until payment.

Certain items found on said statement will possibly need explanation, and I shall now endeavor to make such explanations as I think necessary, and give my reasons for them:

The matters of account in controversy grow out of a contract between plaintiffs and defendants, dated Jan. 3rd, 1902, a copy of which is in evidence. At the date of said contract the plaintiffs had on their books an unsettled account against L. G. Glass, individually, the balance due on which seems to have been \$10.00 or thereabout. The plaintiffs seem to have added the name of J. P. Glass to that of L. G. Glass on their books on the page allotted to said old account against said L. G. Glass, and treated said balance of said old account as a part of their account against the firm of L.G. & J.P.

Glass. I do not think, under the evidence, that this was proper, and hence in statement "A" have not allowed this as a charge. On the 8th day of Jan. 1902, a few days after the contract was entered into, and again on the 24th of same month, defendants, L. G. Glass, got from plaintiffs store certain articles of merchandise which he contends should be charged to him individually, and not to the firm composed of himself and brother. I think, however, as these items were gotten after the date of the contract, and as plaintiffs treated and charged them on the partnership account, that they are proper charges, and hence have allowed them.

The plaintiffs have the defendants charged with two items of \$5.73 and \$4.40, respectively, for handling lumber. I do not think under the evidence that these are proper charges. It appears that there was an understanding between the parties that if the defendants would deliver said lumber at such places on the plaintiffs' lumber yard as the plaintiffs or their agents should designate, no charges would be made for handling the lumber. I think the evidence shows that in the main the defendants complied with this agreement, though there is some evidence that the defendants' teamsters did not at all times deliver the lumber at the exact places on said yard designated by the said plaintiffs or their agents.

I have also charged certain items of merchandise gotten by J.P. Glass alone to the partnership, although there is nothing to show to which particular yard or lot of lumber they should be charged. It seems to me however, that this was the clear intention of the parties, that any articles gotten by either of the parties should be charged against the partnership. These matters can be easily adjusted between the partners themselves on settlement of their partnership business.

It appears that on the 26th day of July, 1902, the plaintiffs entered into an independent contract with L. G. Glass with respect to certain lumber known as the "Hinkle & Banner" lumber, and after that date I think the items of merchandise gotten by L. G. Glass for for his personal use should not be charged against the partnership

account, but should be treated as advancements to him under that contract, unless there is something in the account, or other evidence, to show that such items are properly chargeable against some particular lumber mentioned in contract of Jan. 3rd, 1902, and I have acted accordingly.

Again on Oct. 10th, 1902, the plaintiffs entered into another contract with L.G. and W. E. Glass with respect to lumber known as the Elkanah Young lumber. The plaintiffs seem to have kept a separate account of the advancements made under this contract, as well as the lumber delivered under it, but they have improperly given credit thereon for the last three items of credit which should have been credited on the L.G. & J. P. Glass account. It appears, however, that there was really only 18,866 feet, log measure, of the Elkanah Young timber, and that the defendants, or rather the said L. G. & W. E. Glass, delivered to the plaintiffs under said contract of Oct. 10th, 1902, in all 99,412 feet of lumber, and received credit therefor at the rate of \$28.00 per thousand for ones & twos, \$19.00 for common, and \$10.00 for culls. It also appears that all of this 99,412 feet of lumber was manufactured from the C. V. Young timber mentioned in contract of Jan. 3rd, 1902, except so much as was manufactured from the 18,866 feet of the Elkanah Young logs; and, under said contract of Jan. 3, 1902, that the plaintiffs were to have all the lumber manufactured from the C. V. Young timber, at the prices of \$23, \$16, and \$9 for said respective grades of lumber. Now it is manifest that, after selling to the plaintiffs all the lumber to be manufactured from the C. V. Young timber mentioned in the contract of Jan. 3, 1902, as partnership lumber, and receiving large advancements thereon, it was wrong, if not fraudulent, on the part of one of the partners, to-wit, L.G. Glass, to secure with the plaintiffs another contract for the sale of that same lumber or any part of it at an increased price, unless he made it perfectly plain to the plaintiffs, ~~unless~~ the plaintiffs fully realized and understood, that he was so doing. A careful reading and consideration of the evidence on this question leads me to the conclusion that the plaintiffs did not know, at the time they entered

into the contract of Oct. 10th, 1902, that they were re-purchasing at the prices therein stated any part of the lumber which they had theretofore purchased by contract of Jan. 3rd, 1902, and made payments on. I have therefore charged the defendants with a part of the sums advanced on said yard, and given them credit for the C. V. Young lumber taken therefrom as best I could arrive at the amounts. I have found it very difficult, however, to arrive at a correct amount, as there is nothing in the evidence to show the exact amount or grades of lumber which was manufactured from the C. V. Young logs and delivered to the plaintiffs. I arrived at the amounts charged and credited in this way:

"The 99,412 is credited at the price of \$1697.66, or at the average price of \$17.077 per thousand feet. Assuming that the Elkanah Young logs sawed out, i.e. make 18,866 feet of lumber, and that this amount was delivered to the plaintiffs, at the average price of \$17.077 the Elkanah Young timber would have brought \$322.17. Now counting the whole 99,412 feet of lumber at \$23, \$16, and \$9 per thousand feet, by grades, it would have amounted to only \$1442.03. or an average of \$14.505 per thousand feet; and the 80,546 of C. V. Young lumber (being the 99,412 less the 18,866 from the Elkanah Young logs) at the said average price of \$14.505 would amount to \$1168.31. Adding these--\$322.17 and \$1168.31--together, I find that the total price at which the said 99,412 feet should have been credited at \$1490.48 instead of \$1697.66. Now the total advancement on this Elkanah Young lumber was \$1366, and apportioning this between the Elkanah Young part and the C. V. Young part according to the above mentioned values of same, I find that the sum of \$1070.75 should be charged as an advancement on the C. V. Young part of the timber and against the partnership, while only \$295.25 should be charged against the Elkanah young timber.

While this method of apportionment may not be, and, in fact, is not absolutely correct, it is the best I have been able to think of; and certainly, in my view of the case, the defendants have no just grounds of complaint, because they are thereby given credit for the Elkanah Young lumber at log measure, while the probabilities are that some 10% to 15% of it was mill culls, even supposing the logs to have sawed out.

There is a controversy in the depositions and between the parties about a belt pulley, shaft &c., but, as I think this a charge against L. G. & W. E. Glass and not against L. G. & J. P. Glass, shall not report up on it.

There is also a dispute between the parties as to the correct

prices at which a lot of moulding, siding, ceiling &c. should be charged, but as I consider that this stuff is a proper charge against L. G. Glass alone and not against L. G. & J. P. Glass as partners, I shall not trouble myself to pass upon that question.

I now pass to the credit side of the account:

I have already explained how I arrived at the credit to which the defendants are entitled on account of a part of the C. V. Young lumber being improperly credited as Elkanah Young lumber, and will let that explanation suffice.

The defendants claim that that part of the C. V. Young lumber inspected and taken up by Sam Stewart for the plaintiffs from July 28th to Aug. 18, 1903, inclusive, and credited by the plaintiffs as follows, to-wit:

7,532 feet	1 & 2 poplar	Young & Stout	@ \$23. per M	\$173.23
24,563 "	Com.	" " " "	@ 16 "	393.00
16,074 "	Cull	" " " "	@ 9 "	144.60

is credited at too little, both as to quantity of lumber and value of same; and claim that they are entitled to further credits for same as follows:

3,036 feet	1 & 2 poplar	@ \$23. C.V. Young yd.	\$69.83
4,510 "	Com.	@ 16 "	72.20
2,696 "	Cull	@ 9 "	24.27
<u>10,242</u>			<u>\$166.30</u>

As this seems to be one of the chief bones of contention in the case, and as the defendants claim that the failure of the plaintiffs to give credit for this 10,242 feet of lumber constituted such a breach of the contract of Jan. 3rd, 1902, as discharged them from the further performance of the same, I have investigated this matter very closely. In fact I have taken the pains to take up the six tally sheets which constitute the foundation for this controversy, and listed and calculated the lumber tallied thereon, and will return my said calculations with this report. I have gone over these calculations the second time, and am thoroughly satisfied they are correct. I have marked said tally sheets on the face thus: 1 2 3 4 5 and 6. It is clear that the credits given by the plaintiffs are given from the recapitulation of the lumber tallied of these six sheets which is found on sheet marked 5. I do not find the calculation made by or for the defendants among the papers of the case

but only the result of their calculations in Judge Pennington's handwriting. At any rate, according to my calculations, the defendants are entitled to credits on account of the lumber tallied on said six sheets as follows, to-wit:

8,731 feet 1 & 2 poplar,	@ \$23 per thousand	\$200.58
25,072 " Com. "	@ 16 " "	401.15
16,195 " Cull "	@ 9 " "	144.94

and I have so credited same. So, if my calculations are correct, the plaintiffs have given credit for \$35.78 too little, and the defendants are claiming credit for \$130.42 too much.

The next dispute I shall consider is the lumber tallied on sheet "G" filed with the deposition of L. G. Glass. I have gone over the evidence in regard to this matter, and find it to be somewhat conflicting, but I think that the tally sheet itself should be given great weight in the determination of this question, and this, coupled with the positive evidence of L. G. Glass who made the sheet in regard to the matter, and the corroborating evidence of Wade Ellison and others, overbalances the evidence to the contrary, and leads me to the conclusion that the lumber tallied on this sheet was inspected and measured by Sam Stewart as agent for the plaintiffs, and that the corresponding tally sheet of same kept by J. M. Davidson was misplaced in some way. But I also find that the calculation of same as made on said sheet is erroneous, and I have calculated same correctly and given credit accordingly. I file my calculation with this report.

The foregoing, I believe, are all the matters in controversy in regard to the account between the parties.

IIII.

By another decree, entered in said cause on the 29th day of September, 1904, I am further required "to ascertain and report, in addition to the duties required by former decree, what damages, if any, the plaintiffs have sustained by reason of the failure of the defendants to comply with the contract; and what damages, if any, the defendants have sustained by reason of the failure of the plaintiffs to comply with the contract". It was mainly to this question of damages that the arguments and briefs of counsel referred.

The plaintiffs claim that the defendants violated the said contract by their failure to deliver to them certain of the lumber mentioned in the said contract of Jan. 3, 1902, to-wit: a part of the lumber manufactured from the C. V. Young timber, all of the lumber manufactured from the Ozro Young timber, and a part of the lumber from the Edwards yard, on which they had made advancements, and by selling said lumber to R. C. Duff, or otherwise disposing of it, on account of which breach they are entitled to recover from the said defendants damages.

The defendants, on the other hand, claim that the plaintiffs first violated the said contract (1) by improper, or wrongful, or too close, inspection and grading of the lumber which was delivered, (2) by failure to grade 4/4 six inch clear boards as ones & twos, and (3) by failure to give credit for certain lumber which was inspected, graded and received by them, on account of which breaches they were discharged from a further compliance with, or performance of, the said contract on their part, and were and are also entitled to damages for the said breaches.

Without going into a detailed discussion or consideration of the evidence on this point, I have, from the evidence arrived at the following conclusions in regard to same:

First.--The defendants have failed to show by a preponderance of evidence that there was any wrongful inspection of the lumber received by the plaintiffs, either as to lumber in general, or as to 4/4 six inch clear boards.

Second.--That the defendants have shown, by a preponderance of evidence, that the defendants did not give them the proper credit for the lumber inspected by Sam Stewart from July 28 to Aug 18, 1903, inclusive, as hereinbefore shown. But at the same time, I do not consider this such a breach of the contract on the part of the plaintiffs as that the defendants were discharged from a further performance of the same, as I think this was merely due to a mistake in calculations of the amount of lumber--such a mistake as any one is liable to make

in calculating lumber. The most that can be claimed by the defendants in regard to this matter, in my opinion, is that such failure to give credit only gave them a right of action against the plaintiffs for the difference between the amount for which credit was given and the amount for which credit should have been given. As hereinbefore shown, I have ~~xxxx~~given them the proper credit in my adjustment of the account between them. I get my idea of the law here applied from Clark on Contracts page 652 &c.

Having arrived at this conclusion as to the defendants' claim for damage, I now come to a consideration of the plaintiffs claim for damages on account of defendants failure to perform:

It appears that about the 1st of September, 1903, the defendants sold to R. C. Duff all the Ozro Young lumber, a large part of the C. V. Young lumber at the prices of \$34. for 1 & 2, \$24. for common, \$12 for 5/4 to 8/4 culls, and \$11.00 for 4/4 culls. Mr. R. C. Duff, in his depositions, shows the amounts of lumber received by him up to the time of the taking his deposition, to be 38,471 of one and two, 83,338 of common and 61,280 of culls, and 6,561 of lynn. It also appears from the deposition of L. G. Glass that at the time said Duff gave his deposition in the case there was from 20,000 to 30,000 feet of the Ozro Young lumber which had not then been taken up by Duff, being stattered along the road between Wallen's creek and Duffield. It also appears from the evidence that there was some 18,000 feet of oak lumber manufactured at the Edwards yard which the defendants did not deliver to the plaintiffs.

The next question is: What is the measure of said damages? The plaintiffs claim that the purpose for which they bought the said lumber was mainly to manufacture it into finished lumber at their mill at Pennington Gap, such as bevel siding, ceiling &c., and that the true measure of damages is the difference between the contract price and the prices of the finishes lumber made therefrom, less the cost of finishing same, while the defendants claim that the true measure of the damages, if any, is the difference between the contract price and the market price at Pennington Gap, Va.

After having read all the authorities referred to by the parties, or rather, their counsel, as well as other authorities on this question, it is my opinion that the rule applicable to this case is laid down by the Supreme Court of Virginia, in the case of of Nottingham Coal & Ice Co. vs. Preas, 102 Va. page 820.

The evidence of A. Johnson shows that he could have purchased from the Virginia, Coal & Iron Co., at their mills in Wise County, Virginia, poplar lumber, in place of that which the defendants failed to deliver, at the following prices: for ones & twos \$40.00, for common \$27.00 to \$30.00, and for culls \$14.00 or \$15.00. This seems to be the only evidence in the case which shows that the plaintiffs could have supplied themselves with any lumber in place of that which the defendants failed to deliver. There is no evidence in the case which shows that the plaintiffs could not have replaced the lynn and oak lumber which the defendants failed to deliver at the contract price.

I therefore find the plaintiffs damage to be as follows on account of the poplar lumber mentioned by R. C. Duff in his deposition:

38,471 feet 1 & 2 @ 17 per M (\$40. minus \$23)	\$654.00
83,338 " com. @ 11 " (\$27. minus \$16.)	916.72
61,280 " cull @ 5 " (\$14. minus \$9.)	306.40
cost of delivery of same 194,689 ft. @ \$1. per M	194.69
163,189 Making total damage on account of same	\$2071.81
	212.80
	319.20

The average damage per thousand feet of this 194,689 feet I ascertain to be \$10.64. Now counting the 20,000 to 30,000 feet mentioned by L. G. Glass which had not yet been taken up as being as good as that which had been taken up, and counting it at said average price of \$10.64, the plaintiffs damage on that would be anywhere from \$212.80 to \$319.20.

As to the 6,561 feet of lynn and \$18.00 feet of oak, the plaintiffs have failed to show any difference between the contract and market price at Pennington Gap, and are not, therefore, entitled to recover any damage on account of same.

I have been requested by counsel for plaintiffs to report in the alternative on this question of damages, and do so as follows:

If the court should be of opinion that the plaintiffs are entitled

titled, as damages, to the difference between the contract price and the price they could have re-sold the lumber for in the rough at Pennington Gap, then I find that their damages would be \$2969.62 as shown by "Exhibit No. 1" with A. Johnson's deposition.

If the court should be of opinion that the plaintiffs are entitled, as damages, to the difference between the contract price and the price for which they could have re-sold the same after working it up into finished lumber at their mill, less the cost of so working it, then I find that the plaintiffs damage would be \$3607.34, as shows by the aforesaid exhibit.

As above stated, however, I do not think either of these methods of calculation are correct, because the plaintiffs, had they purchased from the Virginia Coal & Iron Co. the same amount of lumber at the prices quoted, they could have made those same profits.

And now, having reported upon all matters referred to me, or required by the parties, same is respectfully submitted.

L. T. Hyatt

Special Commissioner.

Fee for this report \$60.00.

Virginia, Lee County, to-wit:

I, L. T. Hyatt, do solemnly swear that I have been engaged in taking depositions, hearing arguments of counsel, reading evidence, considering authorities presented by counsel, and making up and writing this report eighty hours at the least. So help me God.

L. T. Hyatt

Swoen to before me by L. T. Hyatt, Feb. 17th, 1905.

H. C. Gering

Clerk

By

M. E. Hickey, D.C.

In account with A. & N. L. Johnson.

568 J

1.65 ✓
5.95 ✓
310.00 ✓
500.00 ✓
200.00 ✓
550.00 ✓
125.00 ✓
450.00 ✓
700.00 ✓
400.00 ✓
280.92 ✓
7.25 ✓

$$\begin{array}{r} 1070.75 \\ \hline 36387.17 \end{array}$$

34.29 ✓
176.46 ✓

1924.44

	By	5,748 ft.	Gull Poplar	●	\$9,	Horton yard	51.73 ✓
	"	13,652 "	Lynn	●	12,	" "	163.82 ✓
	"	715 "	1 & 2 Oak	●	20	" "	14.30 ✓
	"	1,994 "	Com.	●	12	" "	23.92 ✓
	"	1,554 "	Gull	●	7	" "	10.87 ✓
	"	one load	lumber			" "	7.00 ✓
	"	Interest				" "	3.25 ✓
June 13.	"	1,012 ft.	1 & 2. Oak,	●	\$20	" "	20.24 ✓
	"	3,033 "	Com.	●	12	" "	36.39 ✓
	"	1,857 "	Gull	●	7	" "	12.99 ✓
	"	658 "	1 & 2. Poplar	●	23	" "	15.13 ✓
	"	4,023 "	Com.	●	16	" "	64.36 ✓
	"	3,362 "	Gulls	●	9	" "	30.25 ✓
	"	2,246 "	Lynn	●	12	" "	26.95 ✓
	"	one lot	gum lumber			" "	10.00 ✓
July 2.	"	1,826 ft.	1 & 2. Poplar	●	\$23,	C.V. Young yard	42.00 ✓
	"	4,120 "	Com.	●	16	" "	65.92 ✓
	"	3,054 "	Gull	●	9	" "	27.49 ✓
May 29 to	"	the C.V. Young	part of the			lumber credited as	
July 28.	"	Elkanah Young	timber (see report)				1168.31 ✓
July 28	"	8,721 ft.	1 & 2 Poplar	●	\$23. per	M., C.V. Young	200.58 ✓
to	"	25,072 "	Com.	●	16	" "	401.15 ✓
Aug. 18, inc.	"	16.105 "	Gull	●	9	" "	144.94 ✓
Dec. 5.	"	Edwards	lumber taken up				369.95 ✓
	"	Discount	Dry creek yard				14.40 ✓
			Total credits				<u>\$4850.38</u>
		Total charges			\$6587.17		
		" credits			4850.38		
		Leaving balance due plffs.			<u>\$1736.79</u>		

8 x 1	8
9 x 15-	135-
10 x 8	80
11 x 7	77
12 x 7	84
13 x 10	130
14 x 4	56
15 x 17	255-
16 x 6	96
17 x 6	102
18 x 7	126
19 x 4	76
20 x 11	220
21 x 6	126
22 x 4	88
23 x 1	23
24 x 11	264
25 x 4	100
26 x 2	52
27 x 5	135-

2233

2233

5 x 9
6 x 30
7 x 48
8 x 59
9 x 71
10 x 43
11 x 40
12 x 34
13 x 22
14 x 19
15 x 24
16 x 7
17 x 8
18 x 10
19 x 4
20 x 10
21 x 7
22 x 5-
23 x 2
24 x 3
25 x 2
26 x 1
27 x 3

10 7
45-
180
336
472
639
430
440
408
286
266
360
112
136
180
76
200
147
110
46
72
50
26
51

5068

3 x 21	63
4 x 26	104
5 x 15-	75-
6 x 37	222
7 x 41	287
8 x 38	304
9 x 72	648
10 x 31	310
11 x 17	187
12 x 13	156
13 x 5-	65-
14 x 11	154
15 x 6	90
16 x 1	16
17 x 2	34
18 x 2	36
19 x 2	38
22 x 1	22
23 x 1	23
25 x 1	25

2859

2

8 x 9	72
9 x 3	27
10 x 11	110
11 x 6	66
12 x 14	168
13 x 6	78
14 x 10	140
15 x 14	210
16 x 6	96
17 x 5-	85-
18 x 14	252
19 x 2	38
20 x 3	60
21 x 4	84
22 x 5-	110
23 x 3	69
24 x 5-	120
25 x 5-	125-
27 x 4	108

2018

5 x 52
6 x 79
7 x 75-
8 x 85-
9 x 66
10 x 67
11 x 40
12 x 57
13 x 33
14 x 20
15 x 33
16 x 18
17 x 9
18 x 10
19 x 10
20 x 5-
21 x 14
22 x 5-
23 x 2
24 x 10
25 x 5-
27 x 2

136
260
474
525-
680
594
670
440
684
429
280
495-
288
153
180
190
100
294
110
46
240
125-
54

7311

3 x 40	120
4 x 48	192
5 x 69	345-
6 x 87	522
7 x 86	602
8 x 67	536
9 x 62	558
10 x 38	380
11 x 23	253
12 x 29	348
13 x 14	182
14 x 4	56
15 x 6	90
16 x 7	112
17 x 7	119
18 x 2	36
24 x 1	24

4475

45
20

65
1+2

Com

(3)

bull

9x6	54
8x1	8
10x5-	50
11x11	121
12x8	96
13x9	117
14x10	140
15x14	210
16x6	96
17x3	51
18x4	72
21x3	63
22x6	132
25x1	25-
26x1	26
<hr/>	
1261✓	

(60)
15-
92
23
90
18

5x6	30
6x19	114
7x13	91
8x37	296
9x36	324
10x30	300
11x26	286
12x33	396
13x25-	325-
14x23	322
15x18	270
16x9	144
17x7	119
18x3	54
19x1	19
20x5-	100
21x2	42
22x1	22
23x1	23
24x1	24
25x1	25-

3326✓

3x1	3
4x8	32
5x5-	25-
6x13	78
7x23	161
8x29	232
9x38	342
10x18	180
11x8	88
12x10	120
13x11	143
14x8	112
15x5-	75-
16x8	128
17x2	34
18x1	18
<hr/>	
1771✓	

8x2	16
9x5-	45-
11x2	22
14x1	14
15x2	30
19x7	133
21x1	21
26x1	26
<hr/>	
225✓	

5x11	55-
6x22	132
7x15-	105-
8x18	144
9x18	162
10x18	180
11x8	88
12x8	96
13x4	52
14x6	84
15x4	60
16x5-	80
17x3	51
18x9	162
19x1	19
20x2	40
21x2	42
24x2	48

1600✓

3x20	60
4x31	124
5x35-	175-
6x41	246
7x33	231
8x12	96
9x30	270
10x17	170
11x15-	165-
12x8	96
13x3	39
15x1	15-
16x1	16
17x1	17
18x1	18
21x1	21

1759

90
15-

1 + 2

Com (5-)

Cage

7 x 2	14
8 x 1	8
9 x 4	36
10 x 1	10
11 x 9	99
12 x 3	36
13 x 4	52
14 x 5-	70
15 x 16	240
16 x 6	96
17 x 6	102
18 x 13	234
19 x 3	57
21 x 11	231
22 x 2	44
23 x 1	23
24 x 5	120
25 x 3	75-
26 x 1	26
27 x 3	81
<hr/>	
1654 ✓	

(80
10)

(72
24)

60
15-

(54
18)

(100
25
40)

4 x 1	4
5 x 39	195-
6 x 45-	270
7 x 53-	385-
8 x 71	568
9 x 57	459
10 x 50	500
11 x 30	330
12 x 23	276
13 x 24	312
14 x 15-	210
15 x 28	420
16 x 12	192
17 x 12	204
18 x 7	126
19 x 12	228
20 x 4	80
21 x 8	168
22 x 7	154
23 x 1	23
24 x 3	72
25 x 4	100
27 x 3	81

5357 ✓
(6)

3 x 27	81
4 x 68	292
5 x 72	360
6 x 84	504
7 x 69	483
8 x 63	504
9 x 47	423
10 x 28	280
11 x 15-	165
12 x 10	120
13 x 11	143
14 x 5-	70
15 x 8	120
16 x 3	48
17 x 1	17
18 x 1	18
19 x 3	57
20 x 3	60
22 x 1	22
24 x 1	24
<hr/>	
379 ✓	

8 x 1	8
9 x 1	9
10 x 1	10
11 x 2	22
12 x 3	36
13 x 4	52
15 x 11	165
16 x 12	192
17 x 5-	85-
18 x 11	198
19 x 7	133
21 x 4	84
22 x 1	22
23 x 4	92
24 x 4	96
25 x 4	100
26 x 1	26

1330 ✓

(105-
15-)

5 x 10	50
6 x 15-	90
7 x 14	98
8 x 12	96
9 x 16	144
10 x 20	200
11 x 14	154
12 x 20	240
13 x 12	156
14 x 7	98
15 x 17	255-
16 x 4	64
17 x 12	204
18 x 12	216
19 x 7	133
21 x 3	63
22 x 1	22
24 x 2	48
25 x 1	25-
27 x 2	54

2410 ✓

3 x 4	12
4 x 11	44
5 x 11	55-
6 x 14	84
7 x 20	140
8 x 28	184
9 x 22	198
10 x 12	120
11 x 16	176
12 x 7	84
13 x 5-	65-
14 x 7	98
15 x 3	45-
16 x 2	32
17 x 1	17
18 x 4	72
24 x 1	24

1550 ✓

Recapitulation

	<u>1 + 2</u>	<u>Com</u>	<u>Cull</u>
①	2233	5068	2859 ✓
②	2018	7311	4475 ✓
③	1261	3326	1771 ✓
④	225-	1600	1759 ✓
⑤	1654	5354	3791 ✓
⑥	1330 ✓	2410 ✓	1450 -
	8724	25072	16105
	7532	24563	16874
	1189	509	769
			over
	8721		
	23		
	26163	25072	16105-
	17442	16	9
	20058.3	150432	144945-
		25072	401.15-
		401.15-2	200.58
	173.23	710.89	746.67
	393.	166.30	710.89
	144.66	877.19	35.78
	710.89	746.67	
		130.42	

July 2 L. G. Glass Tally Sheet

1st 2

Com

Cull

107

9 x 4	36		5 x 8 -	40	3 x 13	39
10 x 5-	50		6 x 31 -	186	4 x 27	108
11 x 2	22		7 x 28 -	196	5 x 28	140
12 x 6	72		8 x 34 -	272	6 x 35-	210
13 x 10	130		9 x 34 -	306	7 x 36-	252
14 x 15-	210	(60) 72	10 x 40 -	400	8 x 36	288
15 x 20	300	24 312	11 x 26 -	286	9 x 34	306
16 x 14	224	(64) 18	12 x 25 -	300	10 x 26	260
17 x 5-	85-	90	13 x 24 -	312	11 x 22	242
18 x 4	72	18 80	14 x 18 -	252	12 x 24	288
19 x 8	152	16	15 x 18 -	270	13 x 21	273
21 x 9	189		16 x 15 -	240	14 x 15-	210
22 x 3	66		17 x 12 -	204	15 x 11	165
23 x 1	23		18 x 11 -	198	16 x 5-	80
24 x 5-	120		19 x 12 -	228	17 x 4	68
25 x 3	75-		20 x 8 -	160	19 x 3	57
			21 x 4 -	84	21 x 1	21
			22 x 3 -	66	22 x 1	22
			23 x 1 -	23	25 x 1	25
			24 x 3 -	72		
			25 x 1 -	25-		

3054

✓9

27486

4120

16

24720

4120

65920

1826

23

5448

3652

41998

42.00

65.92

27.49

135.41

Suit instituted Sept 1, 1903-

L. V. Young 80,000

Smith Steel Yard Nat
Logs + Lumber 14-51

Elkarak Young Lumber &
for Lumber Lumber \$4⁰⁰
Commissions says should
be allowed.

\$10⁰⁰

July 1, 1903 Lumber moved
10 000 feet should have
not been accounted for

Defendant claims Plaintiff broke
contract.

L. G. Glass

John P. Glass.

Grain 119,000 feet Lumber 14 feet
seed 20

Sold	\$9	10	23	Johnson
	12	24	34	Deff.
	14	27	40	12-6 + 20
	9	17	25	Jan 1, 1903

$$\begin{aligned} 28 - 23 &= 5 \\ 19 - 16 &= 3 \\ 10 - 9 &= 1 \end{aligned}$$

$$\begin{array}{r} 50 \\ 20 \\ \hline 200 \\ 21 \quad 200 \\ \hline 3 \\ 5000 \end{array}$$

$$38,491 \times 5 = 192,455$$

$$88,338 \times 3 = 250,014$$

$$61,280 \times 1 = 61,280$$

$$= 503,749$$

$$25,000 \times 3$$

$$75$$

$$578,75 \text{ Incl from}$$

January 1, 1903.

$$\begin{array}{r} \$ 4.00 \\ 6.00 \\ 10.00 \\ \hline 20.00 \end{array}$$

Shows the bal found on acct \$1736.79

A. & N. L. Johnson,

vs.

L. G. & J. P. Glass,

*Plffs } In chancery.
Defts }*

The report of L. T. Hyatt, Commissioner in this cause is excepted to by plaintiffs, as follows:

First. Because he did not, unequivocally, report the damage due the plaintiffs to be \$3607.34, that being the amount found by him to have been proven in the cause that plaintiffs would have realized as profit by being permitted to manufacture the lumber into finished product.

(See page 11 of report).

Second: Not waiving the above exception but insisting thereon, should plaintiffs be mistaken as to the correctness thereof, then they except to said report because the commissioner did not, unequivocally, report the damages due the plaintiff to be _____ \$2969.62 that being the amount proven to be the difference between the contract price and the market price at Pennington Gap, Virginia, of said lumber in the rough.

(See page 11 of report)

Third: Not waiving the ~~following~~ ^{largest} exceptions, but insisting and relying thereon, should the plaintiffs be mistaken as to the correctness thereof, it is insisted that the balance of \$1736.79 found due the plaintiff on account from the defendants, and the sum of ~~\$2284.61~~ ^{\$390.81} found by said commissioner as due the plaintiffs for damages sustained by them, should be confirmed by the court with interest on each of said sums as found by said commissioner.

Or + Acc, for Plffs.

See dep't of L. G. Glass & H. E. Glass as to the amt of Lumber along road to Duffield.

A. N. L. Johnson

83 Exceptions to Cairns
3 Hyatt's report.

L. G. & J. P. Glass.

Filed in open court
W. T. Ewing,
Clerk.

#27 Inmate

A. & M. L. Johnson
vs { du Chaucery
L. G. & W. E. Glass.

Report of L. T. Hyatt,
Special Commissioner

Filed Feb. 17, 1905.

W. C. Kewing, Clerk.

L. T. HYATT,
ATTORNEY AT LAW,
JONESVILLE, VIRGINIA.

~~Inmate~~
Lumber land out + c #42-7

$$\begin{array}{r} 81 \\ 48 \\ \hline 233 \\ 11 \end{array}$$

$$\begin{array}{r} 59 \\ 48 \\ \hline \end{array}$$

AGREEMENT made this the 3rd day of Jany. 1902, by & between L. G. Glass
+ J. P. Glass parties of the first part and A. & N. L. Johnson parties of the
second part, all of Lee County Va.,

Witnesseth; That the first parties has this day sold to the second parties
the following lumber for poplar \$9.00, for shipping culls \$16.00, for common,
and twenty-three dollars for ones & twos and for red & white oak for shipping
culls \$7.00 common 12.00 ones & twos 20.00 and for lynn & buckeye \$13.00 log
run mill culls out. It is understood that the poplar conveyed in the contract
is located as follows, about 200,000 ft. ~~on~~^{on} the C. V. Young land ~~and~~ Wallens
creek Lee County Va., and 125,000 ft. on the Smith Stout land, and about 125,000
ft. on the Ozro Young land both on Wallens Creek Lee County Va., and about
fifty thousand on James Edwards yard on Powells River near Tip Top School house
and about fifty thousand on the David Lockhart yard, and about 50,000 on the
Wm. Horton land both near Roller Chapel all in Lee County Va., and any other
poplar the first parties may manufacture during the year 1902, subject to
conditions of this Contract, it is agreed that the amount of red and white oak
cannot exceed fifty thousand ft. and that the amount of lynn & buckeye shall not
exceed 50,000 ft. Said first parties agree to cut all the lumber possible
1 x 6 and mulpler of 6 inches when they can do so without lowering the grade of
the lumber, and agree to cut 5/4, 6/4, & 8/4 but are not to cut exceed to
50,000 ft. of 8/4, and not exceed 100,000 ft. of 6/4, and to cut as much 5/4
as the logs will admit. Stock thicker than 4/4 to cut so as to grade common &
better as much as possible, in the 4/4, 6" clear to grade as ones & twos.

And whereas the first party require assistance in the manufacture of the
above lumber ~~is~~ is agreed to advance to them \$100.00 on the Ozro Young Yard,
and \$200.00 on the Smith Stout yard within ten days from this date other ad-
vance ment to be made as the work progresses, but not to exceed 8.00 per M. ft.
when each yard is logged or on stick. Said advancement may be made by a ne-
gotiable note and if so, said second party is to bear the dicout in excess of
6% per annum and should said first parties not deliver enough lumber to pay said
advancement by the time the notes mature they agree to pay 6% per annum
on the same until paid, and when as much as 50,000 ft. has been delivered

on any one yard the second party agree to settle for the same, retaining its proportionable amount of money that may have been advanced on that yard.

It is understood that the first parties hereby grant to the second parties a lien upon the logs lumber or standing timber upon which the advancement may be made, and to furnish a receipt from the owner of their timber for any amount so paid. Said lumber to be delivered during the year 1902 at the second parties mill, Pennington Gap Va.

L. G. Glass

J. P. Glass

A. Johnson

N. L. Johnson

Virginia, Lee County to-wit;

I, J. F. Skaggs a Justice of the Peace for the County & State aforesaid, do hereby certify that L. G. Glass, J. P. Glass, A. Johnson and N. L. Johnson whose names are signed to the foregoing contract bearing date January 3rd 1902, have acknowledged the same before me in my County aforesaid.

Given under my hand this 3rd day of January 1902.

J. F. Skaggs J. P.

Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said County, the 4th day of January 1902. The foregoing writing was presented, and together with the certificate thereto annexed, admitted to record.

Teste;- B. M. Morgan, Clerk.

A Copy, Teste;- B. M. Morgan -----Clerk.

(D. B. 38 page 194 &c)

L. G. Glass et al
With { Contract
A. + W. L. Johnson

Copy

A.

Clerk & Co.

11 8 11
ASSOCIATION STANDARD GRADES

—OF—

**HARDWOOD, POPLAR,
COTTONWOOD AND
... GUM ...**

CLASSIFICATION, OFFICIAL GRADING

—AND—

INSPECTION RULES

—OF—

**The Hardwood Manufacturers' Association
of the United States.**

EDITION OF JUNE, 1902.

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The Hardwood Manufacturers' Association
of the United States.

ASSOCIATION STANDARD GRADES

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PREFACE.

The accompanying Rules, Regulations and Instructions for the Grading of Hardwood Lumber and Measurement of Timber, having been adopted June 3rd, 1902, at Louisville, Ky., and copyrighted in the name of THE HARDWOOD MANUFACTURERS' ASSOCIATION OF THE UNITED STATES, said ASSOCIATION will permit no infringements or violation of its rights under the Copyright Law.

The Rules express as clearly as it is possible to define them the manner of marketing Hardwood Lumber from the mills to the consumer, and they are subjected to the supervisory instruction of the Superintendent of the Bureau of Grades, or his Associates.

These Rules are only published by the ASSOCIATION, and advertising thereon will not be permitted.

BOARD OF ARBITRATION.

The Hardwood Manufacturers' Association
of the United States.

Columbus, Ohio, June 3rd, 1902.

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Classification, Official Grading

...and...

Inspection Rules

FOR THE MEASUREMENT OF

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White Oak, Quartered,	Maple,
Red Oak, Plain,	Rock Elm,
Red Oak, Quartered,	Soft Elm,
Ash,	Birch,
Sycamore, Plain,	Butternut,
Sycamore, Quartered,	Walnut,
Hickory,	Cherry,
Pecan,	Chestnut.
Beech,	

Adopted at

LOUISVILLE, KENTUCKY,

June 3, 1902.

RULES

For the Inspection of

Hardwood Lumber

Excepting

POPLAR, COTTONWOOD AND GUM.

See Pages 15, 32 and 39 Respectively
for the Latter Woods.

GENERAL INSTRUCTIONS.

1. The inspection of lumber is largely a matter of judgment, and these rules are intended to define in a general way such inspection.

2. Exceptions to the general rule of grading will be found under the heading for each kind of lumber.

3. Lumber must be inspected and measured as the inspector finds it, of full length and width. He shall make no allowance for the purpose of raising the grade.

In inspecting all lumber, both sides of the piece shall be taken into consideration in making the grade; bearing in mind that 90 per cent of all lumber only shows one face when finished.

4. Lumber shall be well manufactured, of even thickness, and have parallel edges, and all ragged and bad ends shall be trimmed off.

5. Tapering lumber shall be measured at one-third the length of the board from the narrow end.

6. All lumber shall be tallied surface or face measure, the tally counted up, and the one-quarter

or one-half added to the total where the lumber is one and one-quarter or one and one-half inches thick, and two inches and thicker to be multiplied by the thickness.

In the measurement of all lumber, fractions exactly on the one-half foot are to be given alternately to the buyer and seller; the fractions below the one-half foot are to be dropped, and all fractions above the half foot are to be counted to the next higher figure on the board rule.

7. The standard lengths are four to sixteen feet. Standard thicknesses are $\frac{3}{8}$, $\frac{1}{2}$, $\frac{5}{8}$, $\frac{3}{4}$, 1, $1\frac{1}{4}$, $1\frac{1}{2}$, 2, $2\frac{1}{2}$, 3 and 4 inches when dry.

STANDARD DEFECTS.

8. Each one of the following items constitute a standard defect.

(a) One knot one and one-quarter inches in diameter.

(b) Two knots not exceeding in extent one standard knot.

(c) Worm holes, grub holes, or rafting pin holes not exceeding in extent or damage one standard knot.

(d) Heart, shakes, rot or dote not exceeding in extent or damage one standard knot.

(e) Splits are not to exceed twelve inches in length in firsts, or one sixth the length of the piece in seconds; in the aggregate not more than 20 per cent of the whole in either quality may be so split.

(f) Sap to one-fifth the width of the board in the aggregate.

(g) One bark edge or wane not to exceed one inch in the aggregate, running not to exceed one third the length of the board, and only showing on one side and to be measured.

EXPLANATIONS OF STANDARD DEFECTS.

9. (a) Ordinary season checks are not to be considered defects.

(b) Black stain is not a defect if planing it once will remove it.

(c) Sap shall be considered bright that will show bright after planing.

(d) Splits that do not diverge more than one inch for each foot in length are straight splits.

(e) A straight split not exceeding six inches in length in one end of a piece of lumber, eight inches and over wide, shall not be considered a defect.

(f) Sound heart in firsts and seconds if longer than the width of the piece will reduce it to the next lower grade.

(g) In grades below first and second, boards with one clear face eight inches and over wide shall be raised one grade.

(h) The location of defects in a piece has much to do with its value, and should have great weight in deciding the grade.

(i) Wide pieces of lumber that would take two or three standard knots may have one large knot, equal to two or three standard knots if there are no other defects.

(j) The rules for the inspection of lumber are intended to define the poorest piece that will go in a given grade. Where the defects are slightly beyond the specifications, making it a line board, twelve foot and longer lengths should be given advantage in grade; ten foot and shorter lengths reduced.

(k) All widths and lengths mentioned in these rules shall be inclusive.

STANDARD GRADES.

FIRSTS AND SECONDS.

Firsts and Seconds are combined as one grade. **Firsts** shall be six inches and over wide, ten, twelve, fourteen and sixteen feet long, and free from all defects except in pieces eight inches and over wide, which will admit of one standard defect. **Seconds** are six inches and over wide, eight to sixteen feet long; six and seven inches wide will admit of one standard defect; pieces eight, nine and ten inches wide will admit of two standard defects; pieces eleven, twelve and thirteen inches wide will admit three standard defects, except 10 foot lengths which will admit two defects. As widths increase defects may increase in proportion. This grade will admit 15 per cent of ten foot and 5 per cent of eight foot lengths. Eight foot lengths must grade first in quality.

No. 1 COMMON.

The lengths are six to sixteen feet, not to exceed 10 per cent of six foot lengths. The widths are four inches and over.

Four and five inches will admit one standard knot or equal defects.

Six to eleven inches wide, eight and ten feet long, must work two-thirds clear face in not over two pieces.

Twelve inches and over wide, eight and ten feet long, must work two-thirds clear face in not over three pieces.

Six to eleven inches wide, twelve feet and over long, must work two-thirds clear face in not over three pieces.

Twelve inches and over wide, twelve feet and

over long, must work two-thirds clear face in not over four pieces.

No piece or cutting to be considered which is less than four inches wide and three feet long, but as the width increases the length may decrease, but the shortest cutting to be considered must be eighteen inches long and not less than eight inches wide. Two-thirds of this grade must be six inches and over wide. Pieces six feet long must be clear up to 8 inches wide; over 8 inches wide will admit one standard defect.

No. 2 COMMON.

The lengths are four to sixteen feet. The widths are three inches and over. Pieces four feet long must be clear. Pieces six feet long and longer must cut 50 per cent clear faced.

No piece or cutting to contain less than one foot face measure.

No. 3 COMMON.

The lengths are four to sixteen feet. The widths are three inches and over, and must contain at least 25 per cent clear face cutting. No piece or cutting to contain less than one-half foot face measure.

No. 4 COMMON.

No. 4 Common shall include all lumber not up to the grade of No. 3 Common that can be used for cheap fencing, boxing, sheathing, etc.

There shall be no clear cutting required in this grade.

Sound worm holes are not to be considered defects.

SCOOTS.

Shall include all lumber which falls below No. 4 Common.

LOG RUN.

Means the full run of the log with all grades below No. 2 Common out.

COMMON AND BETTER.

Means the full run of the log with all grades below No. 1 Common out. This grade must contain at least 25 per cent of Firsts and Seconds.

MERCHANTABLE.

Means the full run of the log with all grades below No. 2 Common out, and that the Common and better shall be measured full, and No. 2 Common one-half.

SPECIAL INSPECTION.

Lumber sawed for specific purposes, such as Axles, Bolsters, Tongues, Reaches, etc., must be inspected with a view to the adaptability of the piece for its intended use, because in most cases it cannot be used for other purposes.

CAR AND DIMENSION OAK.

The standard lengths for this stock are as follows: 8, 9, 10, 12, 14 and 16 feet.

PLAIN SAWED RED AND WHITE OAK.

This is in addition to the rules on pages 5, 6, 7 and 9.

Firsts and Seconds. Bright sap up to one-half of the width of the board in the aggregate on one side is not a defect.

Common. Bright sap is no defect in Common grade.

Clear Face Strips. Eight to sixteen feet. $2\frac{1}{2}$, 3, $3\frac{1}{2}$, 4, $4\frac{1}{2}$, 5 and $5\frac{1}{2}$ inches wide must show one

face clear of all defects except bright sap which shall not be considered a defect.

Dimension sawed Common Oak Plank and timbers used for car and building purposes must be free from wind shakes, dry rot, rotten knots, or defects which impair the strength of the piece. Sound hearts in this material shall be considered no defect.

QUARTER SAWED RED AND WHITE OAK.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Firsts and Seconds. One inch of bright sap is not a defect in pieces eight inches and over wide.

Common. Four inch pieces allow one standard defect. Five inch pieces allow two standard defects. Bright sap is no defect.

Clear Face Strips are 8 to 16 feet long, $2\frac{1}{2}$, 3, $3\frac{1}{2}$, 4, $4\frac{1}{2}$, 5 and $5\frac{1}{2}$ inches wide, and must show one face clear of all defects except one-half inch of bright sap.

Common Strips are six feet and over long, not to exceed 40 per cent shorter than twelve foot and must work two-thirds clear face in not more than two pieces; no cutting to be less than four feet long by the full width of the piece. Bright sap is no defect in this grade.

NOTE.—Stain and streaks in quarter sawed Oak will often reduce it below the grade of Firsts and Seconds, and Inspectors are cautioned to be careful in estimating such defects.

All quarter sawed oak must show figure on one face.

Ten per cent of scant lumber allowed if not more than one-sixteenth of an inch scant on the heart edge, if the sap edge is full thickness.

ASH.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Firsts and Seconds. Bright sap is no defect. Five inch widths admitted when the length is eighteen feet and over.

Clear Face Strips. Same as plain oak.

QUARTER SAWED SYCAMORE.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Common. Bright sap no defect.

PLAIN SAWED SYCAMORE.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Bright sap is no defect in any grade.

HICKORY AND PECAN.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Firsts and Seconds. Bright sap is no defect. Pieces four and five inches wide in this grade must be clear.

BEECH, BASSWOOD, MAPLE, ROCK ELM, SOFT ELM.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Bright sap is no defect in any grade.

BIRCH.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Bright sap is no defect in any grade.

Red Birch shall not be less than 75 per cent red on face side.

Four and five inch strips shall have one face all red.

BUTTERNUT.

Standard grading.

WALNUT.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Standard grading applies.

Forty per cent eight, nine and ten foot allowed in Firsts and Seconds.

CHERRY.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Gum spots reduce the piece one grade, when their damage exceeds one-sixth of the surface of the piece; when their damage exceeds one-third of the surface the piece shall be reduced two grades.

CHESTNUT.

This is in addition to the rules on pages 5, 6, 7, 8 and 9.

Firsts and Seconds. Standard grading applies up to twelve inch widths, as widths increase defects may increase in proportion, provided the piece will cut 80 per cent clear in two cuttings, either crosswise or lengthwise, in full lengths or widths of the piece.

Worm holes that are bunched so that their damage will not exceed in extent the number of standard knots allowed in the piece will be admitted.

No. 1 Common, standard grading applies.

No. 3 Common, worm holes admitted in this grade without limit, but must cut two-thirds regardless of worms.

CLASSIFICATION, OFFICIAL GRADING

AND

INSPECTION RULES

FOR THE MEASUREMENT OF

POPLAR LUMBER.

Adopted at Louisville, Kentucky,
June 3rd, 1902.

GRADES AND NOMENCLATURE

The following are the standard grades of Poplar Lumber adopted, and the terms by which they are to be known:

ROUGH STOCK.

Grades.	Standard Thicknesses.
Panel.....	$\frac{5}{8}$ inch and 1 inch.
Wide, No. 1.....	$\frac{5}{8}$ inch and 1 inch.
Wide, No. 2.....	$\frac{5}{8}$ inch and 1 inch.
Firsts and Seconds are a combined grade.....	Standard.
Selects.....	1 inch to 4 inches.
Saps.....	$\frac{3}{4}$ inch to 2 inches.
No. 1 Common.....	$\frac{5}{8}$ to 4 inches.
No. 2 Common.....	$\frac{5}{8}$ to 4 inches.
No. 3 Common.....	$\frac{5}{8}$ to 4 inches.
No. 4 Common.....	$\frac{5}{8}$ to 4 inches.
Scoots.....	1 inch.

Special Grades.	Thicknesses.
Wagon Box Boards.....	1 inch.
Quartered Poplar.....	1 and $1\frac{1}{4}$ inches.
Firsts and Seconds are a combined grade. Common.	
Strips, A, B and C.....	1 inch.
Squares.....	4x4, 5x5, 6x6, 7x7, 8x8, 9x9, 10 x 10 and 12x12 inches.
Firsts and Seconds are a combined grade. Common.	

POPLAR

GENERAL INSTRUCTIONS.

1. The question of grading and inspecting Poplar Lumber is so much a matter of judgment to the inspector, as each piece comes before him, that no definite and positive rules can be laid down on paper by which any piece or any thousand feet can be inspected.

2. The variety of defects, their size and location upon a piece have such relations to each other that the inspector necessarily must depend upon his own judgment in grading, guided by the following rules, so far as they will apply practically.

3. Lumber must be inspected and measured as the inspector finds it, of full length and width. He shall make no allowance for the purpose of raising the grade.

4. In inspecting all lumber, both sides of the piece shall be taken into consideration in making the grade, bearing in mind that ninety per cent of all lumber only shows one face when finished.

5. Lumber shall be well manufactured, of uniform thickness, having parallel edges, and all ragged and bad ends shall be trimmed off.

6. Tapering lumber shall be measured at one-third the length of the board from the narrow end.

7. All lumber shall be tallied surface or face measure, the tally counted up, and the one-quarter or one-half added to the total where the lumber is one and one-quarter or one and one-half inches thick, and two inches and thicker to be multiplied by the thickness.

8. In the measurement of all lumber, fractions

exactly on the one-half foot are to be given alternately to the buyer and seller; the fractions below the one-half foot are to be dropped, and all fractions above the one-half foot are to be counted to the next higher figure on the board rule.

9. Splits that do not diverge more than one inch for each foot in length are to be considered straight splits.

10. A straight split not exceeding six inches in length in one end of a piece of lumber eight inches and over wide shall not be considered a defect.

11. Wide pieces of lumber that would take two or three standard knots may have one large knot equal to two or three standard knots.

12. Sap should be considered bright that will show bright after dressing.

13. The location of defects in a piece of lumber has much to do with its value, and should have great weight in deciding the grade.

14. Lumber shipped rough must be accepted on grades as shown in the rough, and not subject to any changes which may be caused by future mill working, excepting as to the stained sap as heretofore stated.

15. The face side of lumber is the side showing the best quality or appearance.

16. All widths and lengths mentioned in these rules shall be inclusive.

17. In the absence of eight feet lengths in the grades where same is allowed, the per cent of ten feet may be increased proportionately.

18. The rules for the inspection of lumber are intended to define the poorest piece that will go into a given grade. Where the defects are slightly beyond the specifications, making it a line board, fourteen feet and longer should be given advantage in grade, and twelve feet and shorter reduced.

19. All lumber less than one inch in thickness shall be measured surface or face measure.

20. The standard thicknesses are, $\frac{3}{8}$, $\frac{1}{2}$, $\frac{5}{8}$, $\frac{3}{4}$, 1, $1\frac{1}{4}$, $1\frac{1}{2}$, 2, $2\frac{1}{2}$, 3 and 4 inches.

21. The standard lengths are as designated under the heading of each grade.

STANDARD DEFECTS.

22. Each one of the following items constitute a standard defect:

(a) Standard knot one and one-quarter inches in diameter.

(b) Two knots not exceeding in extent or damage one standard knot.

(c) Worm or grub holes not exceeding in extent or damage one standard knot.

(d) Rafting pin holes not exceeding in extent or damage one standard knot.

(e) Sap to one-fifth of the width of the piece in the aggregate, unless otherwise stated.

(f) One bark edge or wane not to exceed one inch in the aggregate, running not to exceed one-third the length of the board and only showing on one side, and to be measured.

(g) Other standard defects as designated under the heading of each grade.

STANDARD GRADES.

PANEL.

Lengths, 12 to 20 feet, admitting ten per cent of 10 feet.

Widths, 18 to 23 inches, 24 to 27 inches and 28 inches and over.

Thickness, $\frac{5}{8}$ inch and 1 inch.

Seventy-five per cent of the total quantity must be clear of knots on both sides, admitting two inches of bright sap on each edge; the balance of

the quantity may contain three defects provided ninety per cent of the piece can be used for Panels four feet and longer in the full width of the board. Two inches of bright sap on each edge admitted, and splits six inches long in one end not to be considered a defect in any board; splits longer than six inches not to be admitted.

WIDE.

No. 1.

Lengths, 12 to 20 feet, admitting ten per cent of 10 feet.

Widths, 18 to 23 inches, 24 to 27 inches and 28 inches and over.

Thickness, $\frac{5}{8}$ inch and 1 inch.

In boards 18 to 23 inches 50 per cent of bright sap will be admitted provided there are no knots, otherwise three standard defects admitted. In boards 24 inches and over, bright sap shall not be considered a defect, and these widths will admit three standard defects, separate or bunched, in addition thereto.

Splits admitted not to exceed fifteen inches in not to exceed ten per cent of the pieces.

WIDE.

No. 2.

Lengths, 12 to 20 feet, admitting ten per cent of 10 feet.

Widths, 18 to 23 inches, 24 to 27 inches and 28 inches and over.

Thickness, $\frac{5}{8}$ inch and 1 inch.

Bright sap no defect.

Eighteen inches may contain five standard defects and one additional defect for each two inches of additional width.

Splits equal in length to width of the board are

admitted in not to exceed ten per cent of boards, and are counted as a defect.

FIRSTS AND SECONDS.

Lengths 10 to 20 feet, admitting not to exceed fifteen per cent of 10 feet.

Widths, 7 to 17 inches.

Standard thicknesses.

In the combined grade of Firsts and Seconds, fifty per cent must be Firsts and fifty per cent may be Seconds.

Firsts shall be eight inches and over wide.

Eight to nine inches must be clear.

Ten to eleven inches will admit one inch of bright sap.

Twelve to fourteen inches will admit one standard knot and two inches of bright sap, or four inches of bright sap if there are no knots or equal defects.

Fifteen to seventeen inches will admit two standard knots, or one standard knot and three inches of bright sap, or four inches of bright sap if there are no knots or equal defects.

Seconds shall be seven inches and over wide.

Seven inches must be clear.

Eight inches will admit of one inch of bright sap.

Nine to eleven inches will admit one standard knot and one inch of bright sap, or three inches of bright sap, or equal defects.

Twelve to fourteen inches will admit two standard knots and two inches of bright sap, or one standard knot and four inches of bright sap, or five inches of bright sap if there are no knots or equal defects.

Fifteen to seventeen inches will admit three

standard knots or two standard knots and three inches of bright sap, or six inches of bright sap if there are no knots or equal defects.

Splits not to exceed in length the width of the board in Firsts and Seconds and not over 20 per cent of the whole in either quality may be so split.

SELECTS.

Length 10 to 20 feet, admitting not to exceed fifteen per cent of 10 feet.

Widths, 6 inches and over.

Standard thicknesses: One inch to four inches.

Selects shall include the following different kinds of boards:

1. A board having a face side as good as a Second, the other side must be as good as a No. 1 Common.

2. A board having a face side as good as a First, the other side must be as good as a No. 2 Common.

Sun checks admitted on the poor side of this board.

3. A board that has one more standard defect than would admit it to a Second. Examples:

(a.) A board six to seven inches wide with one standard knot or equal defect.

(b.) A board eight inches wide with one inch of bright sap and one standard knot or equal defects.

(c.) Boards nine to eleven inches wide with two inches of bright sap and one standard knot or equal defects, and accordingly as widths increase.

Splits not to exceed in length the width of the board in this grade and not over 20 per cent of the whole may be so split.

SAPS.

Lengths, 10 to 20 feet, admitting not to exceed fifteen per cent of 10 feet.

Widths, four inches and over.

Standard thicknesses: $\frac{3}{8}$, $\frac{5}{8}$, $\frac{3}{4}$, 1, $1\frac{1}{4}$, $1\frac{1}{2}$, and 2 inches.

Saps shall be clear of knots up to ten inches in width.

Eleven and twelve inches will admit one standard knot.

Thirteen inches and over will admit two standard knots.

Splits not to exceed the width of the board up to ten inches are admitted. Boards over ten inches in width will admit a split one-sixth the length of the board, if there are no other defects.

No. 1 COMMON.

Lengths, 8 to 20 feet, admitting not to exceed five per cent of 8 feet, and fifteen per cent of 10 feet. Widths, 5 inches and over.

Standard thicknesses: $\frac{5}{8}$ to four inches.

Bright sap shall not be considered a defect.

Sound discolored sap one-third of the board admitted.

No. 1 Common shall be inspected to grade according to the percentage of clear face rippings and cuttings as shown below, subject to the restrictions on the reverse side of said cuttings and rippings, as hereinafter stated.

The reverse side of any ripping or cutting may contain defects, excepting splits, which will not exceed two inches in the aggregate.

The following table explains fully how the width and length of boards are to grade:

5 inches	{ 8 to 14 ft long shall cut 90% in 2 pieces. 16 ft and longer shall cut 90% in 3 pieces.
6 to 7 inches	{ 8 to 10 ft long shall cut 85% in 2 pieces. 12 ft and longer shall cut 85% in 3 pieces.

8 to 9 inches	{ 8 to 10 ft long shall cut 75% in 2 pieces. 12 to 16 ft long shall cut 75% in 3 pieces. 18 to 20 ft long shall cut 75% in 4 pieces.
10 to 12 inches	{ 8 to 10 ft long shall cut 70% in 2 pieces. 12 to 14 ft long shall cut 70% in 3 pieces. 16 to 18 ft long shall cut 70% in 4 pieces. 20 ft long shall cut 70% in 5 pieces.
13 inches and wider	{ 8 to 10 ft long shall cut 66 $\frac{2}{3}$ % in 3 pieces. 12 to 14 ft long shall cut 66 $\frac{2}{3}$ % in 4 pieces. 16 to 18 ft long shall cut 66 $\frac{2}{3}$ % in 5 pieces. 20 ft long shall cut 66 $\frac{2}{3}$ % in 6 pieces.

No. 2 COMMON.

Lengths, 8 to 20 feet, admitting not to exceed five per cent of 8 feet, and fifteen per cent of 10 feet. Widths, 4 inches and over.

Standard thicknesses: $\frac{5}{8}$ to four inches.

No. 2 Common shall include all lumber that will not come up to the grade of No. 1. Common and that will work one-half of the piece into sap or clear face rippings and cuttings. No cutting to be less than four inches wide and less than two feet in length.

Bright sap and sound discolored sap is not to be considered a defect in this grade.

No. 3 COMMON.

Lengths, 6 to 20 feet, admitting not to exceed five per cent of 6 feet, ten per cent of 8 feet and ten per cent of 10 feet.

Widths, 3 inches and over.

Standard thicknesses: $\frac{5}{8}$ to four inches.

No. 3 Common must contain at least one-half of sound rippings and cuttings, remainder of the board to be as good as a No. 4 Common. No cutting to be less than three inches wide and less than two feet in length.

A ripping or cutting shall be considered sound

containing sound knots on face side. Sound discolored sap is not a defect in this grade.

No. 4 COMMON.

Standard thicknesses: $\frac{5}{8}$ to two inches.

No. 4 Common shall include all lumber not up to the grade of No. 3 Common, that can be used for rough boxing, sheathing, etc. Worm holes are not to be considered defects, and unsound lumber with sufficient substance to hold nails admitted.

SCOOTS.

Standard thickness: one inch.

Scoots shall include all lumber that will not come up to the grade of No. 4 Common.

WAGON BOX BOARDS.

Lengths, 12, 14 and 16 feet.

Widths, 8 to 12 inches, and 13 to 17 inches.

Thickness, one inch.

In Box Boards bright sap or slightly discolored sap that will dress up sound, not necessarily bright but not black, admitted.

One sound knot not to exceed one inch in diameter, showing on one side only, will be admitted in this grade.

Splits in 12 foot may be fifteen inches long, or any defect that will cut off leaving the board 10 feet 6 inches long. 14 feet is used for making one side 10 feet 6 inches, and one end 3 feet 6 inches, so a split is a serious defect in this length; but ten per cent of all 14 feet in a given lot may have one split not to exceed 12 inches in length. 16 foot may have one standard knot, showing through the piece, provided it will cut two pieces same as a 14 foot board.

QUARTERED POPLAR, No. 1 AND 2.

Lengths, 10 to 20 feet, admitting not to exceed fifteen per cent of 10 feet.

Widths, 5 inches and over.

Thickness: 1 inch and $1\frac{1}{4}$ inches.

Defects in this kind of Poplar differ from those in plain sawn, and consist largely of spike knots and open gum spots.

Firsts and Seconds shall be a combined grade.

Five inches must be clear.

Six to seven inches, ten and twelve feet long, will admit two knots showing one inch space on edge, or one knot condensed not exceeding a two inch space.

Six to seven inches, fourteen feet and longer, will admit three knots showing one inch space on edge, or one or two defects condensed not exceeding three inches of space.

Eight to nine inches, ten and twelve feet long, will admit two knots showing one and one-half inches in space on edge, or one defect condensed not exceeding three inches in space.

Eight to nine inches, fourteen feet and longer, will admit three knots one and one-half inches in space on edge, or one or two defects condensed not exceeding the same.

Ten inches and wider, ten and twelve feet long, will admit two knots two inches in space on edge, or one defect condensed not exceeding the same.

Ten inches and wider, fourteen feet and longer, will admit three knots two inches in space on edge, or one or two defects condensed not exceeding the same.

QUARTERED POPLAR, COMMON.

Lengths, 8 to 20 feet, admitting not to exceed fifteen per cent of 10 feet.

Widths, 4 inches and over.

Thickness: 1 inch and $1\frac{1}{4}$ inches.

4 inches, 8, 10 and 12 feet long must cut 85% clear face cutting in 2 pieces.

14 feet and longer must cut 85% clear face cutting in three pieces.

5 to 6 inches, 8 to 10 feet long must cut 80% clear face cutting in 2 pieces.

12 to 14 feet long must cut 80% clear face cutting in 3 pieces.

16 feet long must cut 80% clear face cutting in 4 pieces.

18 to 20 feet long must cut 80% clear face cutting in 5 pieces.

7 to 8 inches, 8, 10 and 12 feet long must cut 70% clear face cutting in three pieces.

14 to 16 feet long must cut 70% clear face cutting in four pieces.

18 to 20 feet long must cut 70% clear face cutting in five pieces.

9 inches and wider, 8, 10 and 12 feet long must cut $66\frac{2}{3}\%$ clear face cutting in three pieces.

14 to 16 feet long must cut $66\frac{2}{3}\%$ clear face cutting in four pieces.

18 feet long must cut $66\frac{2}{3}\%$ clear face cutting in five pieces.

20 feet long must cut $66\frac{2}{3}\%$ clear face cutting in six pieces.

STRIPS.

Lengths, 10 to 20 feet, admitting not to exceed fifteen per cent of 10 feet.

Widths, 4, 5 and 6 inches.

A—Strips shall be clear of all defects excepting one inch of bright sap showing only on one face.

B—Strips, bright sap admitted without limit or

in the absence of sap two sound knots not to exceed $\frac{3}{4}$ inch in diameter or one standard knot.

C—Strips will admit of bright or sound discolored sap without limit or three standard knots or their equivalent in smaller knots.

SQUARES.

Lengths, 8, 9, 10, 12, 14, 16, 18 and 20 feet.

Sizes, 4x4, 5x5, 6x6, 7x7, 8x8, 9x9, 10x10 and 12x12.

Firsts and Seconds—A combined grade.

Firsts are to be sound and free from hearts, shakes and checks.

4x4, 8 to 12 feet long may contain one standard knot or two inches of bright sap on two edges.

4x4, 14 feet and longer may contain one standard knot and two inches of bright sap on two edges.

5x5 and 6x6, 8 to 12 feet long may contain one standard knot and two inches of bright sap on two edges.

5x5 and 6x6, 14 feet and longer may contain two standard knots or three inches of bright sap on two edges.

7x7, 8 to 12 feet long may contain two standard knots or three inches of bright sap on two edges.

7x7, 14 feet and longer may contain two standard knots and three inches of bright sap on two edges.

8x8, 8 to 12 feet long may contain three standard knots or three inches of bright sap on two edges.

8x8, 14 feet and longer may contain three standard knots and three inches of bright sap on two edges.

9x9, 8 to 12 feet long may contain four standard knots or three inches of bright sap on two edges.

9x9, 14 feet and longer may contain four standard

knots and three inches of bright sap on two edges. 10x10 and 12x12, 8 to 12 feet long may contain five standard knots or four inches of bright sap on two edges.

10x10 and 12x12, 14 feet and longer may contain five standard knots and four inches of bright sap on two edges.

Seconds will admit all knots as described in Firsts, but bright sap shall be admitted without limit. If there are no knots one-third sound discolored sap shall be admitted or slight season checks on either side.

COMMON SQUARES.

Common Squares will include all Squares not up to the grade of Firsts and Seconds that will cut two-thirds their length clear in short pieces that can be used for newells and short turnings, or will admit of stained sap without limit, if they have no more defects than would go in a Second, or will admit of seasoning checks running full length on two sides.

DRESSED POPLAR.

1. Dressed Poplar shall be inspected from the best or face side.
2. Defective dressing on reverse side admitted.
3. Slightly chipped grain on the face side admitted, provided it does not exceed six inches square in firsts and seconds, and twelve inches square in saps and selects in the aggregate.
4. Imperfect manufacture in dressed stock, such as torn grain, broken knots, mismatched, insufficient tongue or groove, shall be considered defects and will reduce the grade accordingly.
5. Partition, ceiling, flooring or drop siding, having less than three-sixteenths inch tongue shall not be admitted in any grade above No. 2. Common.

6. Wane on the reverse side not exceeding one-third the width and running not to exceed one-sixth the length of any piece, provided the wane does not extend into the tongue, or over one-half the thickness below the groove will be admitted.

STANDARD SIZES OF DRESSED POPLAR.

Finishing: $\frac{1}{2}$ inch S. 2 S., $1\frac{5}{8}$ inch; $\frac{5}{8}$ inch S. 2 S., $1\frac{7}{8}$ inch; $\frac{3}{4}$ inch S. 2 S., $1\frac{9}{8}$ inch; 1 inch S. 2 S. $1\frac{3}{8}$ inch; $1\frac{1}{4}$ inches S. 2 S., $1\frac{3}{2}$ inches; $1\frac{1}{2}$ inches S. 2 S., $1\frac{1}{2}$ inches; 2 inches S. 2 S., $1\frac{3}{4}$ inches.

Casing and Base: Dressed to $1\frac{3}{8}$ inch thick; $3\frac{1}{2}$ inches, $4\frac{1}{2}$ inches, $5\frac{1}{2}$ inches, $6\frac{1}{2}$ inches, $7\frac{1}{2}$ inches, $8\frac{1}{2}$ inches, $9\frac{1}{2}$ inches and $11\frac{1}{2}$ inches wide.

Flooring and Partition: Dressed to $1\frac{3}{8}$ inch thick; $2\frac{1}{4}$ inches, $3\frac{1}{4}$ inches, $4\frac{1}{4}$ inches and $5\frac{1}{4}$ inches face width. Where $3\frac{1}{2}$ inches face stock is wanted it shall be counted $4\frac{1}{4}$ inches strip count.

Ceiling: $\frac{3}{8}$ inch dressed to $1\frac{5}{8}$ inch; $\frac{1}{2}$ inch to $1\frac{7}{8}$ inch; $\frac{5}{8}$ inch to $1\frac{9}{8}$ inch; $\frac{3}{4}$ inch to $1\frac{1}{8}$ inch; same widths as partition.

BEVEL SIDING.

Standard lengths to be four foot and over, with not more than 10% under eight foot.

Bevel Siding made from 1×4 , 5 and 6 inch strips, S. 4 S., to $2\frac{3}{8} \times 3\frac{3}{8}$, $4\frac{3}{8}$ and $5\frac{3}{8}$ inches, and resawed on a bevel.

Bevel Siding: No. 1 must be practically free of defects except one inch of sap or one or two knots on thin edge that will be covered by lap.

Selects: Bright sap admitted without limit, or in the absence of sap, two sound knots not to exceed three-quarters inch in diameter or one standard knot.

No. 1 Common: Will admit bright or sound discolored sap without limit, or three standard knots or their equivalent in smaller knots.

No. 2 Common: Will admit all pieces that will

not come up to the grade of No. 1 Common, which can be used for cheap siding without waste of more than one-third the length of any one piece. Pin worm holes admitted.

DROP SIDING.

Drop siding, same grade and lengths as bevel siding and shall be same widths as partition and worked to three-quarters inch thick.

CASING AND BASE.

Casing and Base: Firsts and Seconds must be practically clear on face side.

Seven to nine inches, one inch of bright sap and ten to twelve inches, one and one-half inches of bright sap will be admitted on one edge showing on face side.

Saps and Selects: Bright sap admitted without limit, or in the absence of sap, one sound knot, not exceeding three-quarters inch in diameter, will be admitted in stock eight inches and under, or one standard knot in stock nine inches and over.

No. 1 Common: Will include all stock that will not come up to the grade of Saps and Selects that will work two-thirds of its length clear, regardless of sap. Stained sap without limit, where there are no other defects admitted in this grade.

PARTITION, FLOORING AND CEILING.

No. 1: Must be clear of all defects except bright sap.

No. 1 Common: Will admit stained sap without limit, or clear sap and one small knot, not exceeding three-quarters inch in diameter, or two small knots, or one standard knot if there is no sap.

No. 2 Common: Will include all stock that will not come up to the grade of No. 1 Common that can be used for check work without waste of more than

one-third the length of any one piece. Pin worm holes admitted.

Yellow Face Stock is a special grade in partition, flooring and ceiling.

MOULDINGS.

Mouldings shall be based on the National Moulding Book.

STANDARD
CLASSIFICATION AND INSPECTION
— FOR —
COTTONWOOD LUMBER

ADOPTED BY
The Hardwood Manufacturers' Association
of the United States

AT LOUISVILLE, KY., JUNE 3, 1902

General Explanations and Instructions.

It shall be the duty of the Inspector in determining the quality of the lumber inspected by him to place same in that class or quality to which it approaches nearest in description and value, at all times using the description of qualities contained in the following rules as the standard of comparison. He shall inspect and measure all lumber standard grades, lengths and thicknesses as herein described, which shall be known as Standard Inspection; unless the lumber be cut for specific purposes, in which case he shall be governed by the conditions of the trade as made known to him.

He must inspect all lumber on the poorer side.

All tapering boards shall be measured at the narrow end and in lengths of even feet.

Lumber shall be sawed of full and even thickness and of parallel width.

Scant-sawed lumber shall be reduced to the next standard thickness.

Unevenly sawed lumber shall be placed in the grade of No. 2 or Box Common.

The standard lengths are four to sixteen feet.

The standard thicknesses are $\frac{3}{8}$ inch, $\frac{1}{2}$ inch, $\frac{5}{8}$ inch, $\frac{3}{4}$ inch, 1 inch, $1\frac{1}{4}$ inch, $1\frac{1}{2}$ inch, 2 inch, $2\frac{1}{2}$ inch, 3 and 4 inch, when dry.

All lumber less than 1 inch in thickness shall be measured face measure.

Bright sap in cottonwood is not to be considered a defect and sap shall be considered bright which will show bright when planed once.

Standard Defects. One knot $1\frac{1}{4}$ inches in diameter. Two knots not exceeding in extent one standard knot.

Worm holes, grub holes or rafting pin holes not exceeding in extent or damage one standard knot.

Splits are not to exceed twelve inches in length in Firsts, or one-sixth the length in Seconds; in the aggregate not more than 20 per cent of the whole in either quality may be so split.

One bark edge or wane not to exceed one inch in the aggregate running not to exceed one-third the length of the board and showing on only one side and to be measured.

Explanations. Ordinary season checks are not to be considered defects.

Splits that do not diverge more than one inch for each foot in length are straight splits.

The location of defects in a piece has much to do with its value and should have great weight in deciding the grade.

Wide pieces of lumber that would take two or

three standard defects may have one large defect equal to two or three standard defects if there are no other defects.

All widths and lengths mentioned in these rules shall be inclusive.

Standard Grades. All standard grades of Cottonwood shall be classified for the purpose of inspection, as follows:

Box Boards, Firsts and Seconds, No. 1 Common, No. 2 or Box Common and No. 3 Common.

Box Boards. Shall consist of boards 13 inches to 17 inches wide, 12 feet, 14 feet and 16 feet in length; end splits amounting to 6 inches in length and 3 sound pin knots not exceeding $\frac{3}{4}$ inches in diameter showing on one side only shall be admitted. Slightly discolored sap which will dress up sound, not necessarily bright, but not black, shall be admitted.

Firsts and Seconds. Shall be 6 inches and over in width, 10, 12, 14 and 16 feet in length not exceeding 10% of the entire amount may be 10 foot. Pieces 6 inches to 8 inches wide shall be clear; pieces 9 inches to 10 inches wide shall admit one standard defect or its equivalent; pieces 11 inches to 12 inches wide shall admit two standard defects or their equivalent; for each additional two inches in width over 12 inches an additional standard defect or its equivalent shall be admitted. In this grade straight splits shall be admitted which do not exceed in length the width of the piece in inches. Slightly discolored sap which will dress up sound, not necessarily bright, but not black, shall be admitted.

No. 1 Common. Shall be 4 inches and over in width, 8 feet and over in length not to exceed 15 per

cent of the entire amount may be shorter than 12 feet. Pieces 4 inches and 5 inches shall be clear one face and have two square edges. Pieces 6 inches to 8 inches wide shall admit two standard defects or their equivalent. Pieces over 8 inches wide shall admit two standard defects or their equivalent in addition to those allowed in Firsts and Seconds. This grade must work $\frac{3}{4}$ clear one face; no cutting to be considered which is less than 4 inches wide and 3 feet long. Straight splits shall be admitted in this grade in pieces 10 inches and over wide which do not exceed $\frac{1}{4}$ the length of the piece. Slightly discolored sap shall be admitted in this grade.

No. 2 or Box Common. Shall be 3 inches and over in width, 6 feet and over in length, and shall admit all pieces below the grade of No. 1 Common which will work at least one-half without waste for ordinary box making purposes. Stain, worm-holes, warped and wooley pieces belong in this grade.

No. 3 Common. Shall be 3 inches and wider and 4 feet and longer, and must contain at least 25 per cent sound cutting, not less than 3 inches wide and 2 feet long.

COFFIN BOARDS.

Shall be eight, fourteen or sixteen feet long, cut to dry $\frac{3}{4}$ -inch thick; 70 per cent to be thirteen inches and up wide, 10 per cent to be ten inches, 10 per cent to be eleven inches, and 10 per cent to be twelve inches; to have one clean face; to be absolutely free of splits; but one face may have one sound knot not to exceed two (2) inches in diameter.

SQUARES.

Shall be graded as No. 1 and No. 2.

No. 1 Squares shall be practically clear of knots.

No. 2 Squares admit of sound knots, stained sap, small season checks, splits (not to exceed twelve inches in length) and pin worm holes will be allowed.

CAR SIDING STRIPS.

Shall be eight or sixteen feet long, one inch thick and six inches wide and shall have one clear face.

BEVEL SIDING.

First Grade shall be known as No. 1, which shall be absolutely clear face, except small defects within one inch of the thin edge.

Second Grade shall be known as No. 2, which will admit slightly discolored sap, or three sound knots, not to exceed $\frac{3}{4}$ of an inch in diameter.

Third Grade shall be known as No. 3, and shall comprise stock not up to grade of No. 2, admitting unsound knots, splits etc., provided three-fourths of the piece will work merchantable.

PATENT OR DROP SIDING.

First Grade shall be known as No. 1, and shall have one clear face and be otherwise sound.

Second Grade shall be known as No. 2, and will admit of discolored sap, and in six-inch will admit of two standard knots, in eight-inch four standard knots, or their equivalent in smaller knots.

CEILING AND FLOORING.

First Grade shall be known as No. 1, and shall have one clear face and be otherwise sound.

Second Grade shall be known as No. 2, and may admit of one standard knot or three small knots and slight sap stains.

Third Grade shall be known as No. 3, and shall comprise stock not up to grade of No. 2, provided

three-fourths of the piece will work without waste.

Four, five and six inch flooring and ceiling shall be worked $3\frac{1}{4}$ -inch, $4\frac{1}{4}$ inch and $5\frac{1}{4}$ -inch face.

PARTITION.

No. 1 must be clear of knots on both sides.

No. 2 graded same as No. 2 flooring.

CASING AND BASE.

Graded same as Patent Siding, and shall be inspected on face side worked one-half inch less than size given.

MOULDINGS.

Shall be based on Universal Moulding Book.

SUPPLEMENT TO THE EDITION OF JUNE, 1902.

STANDARD
CLASSIFICATION
AND
INSPECTION
FOR
GUM LUMBER

Proposed at Poplar Bluff, October 28, 1902.

Ratified at Memphis, November 1, 1902.

Adopted November 8, 1902.

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❧ ❧ RULES ❧ ❧
For the Inspection of
GUM LUMBER

GENERAL INSTRUCTIONS.

1. The inspection of lumber is largely a matter of judgment, and these rules are intended to define in a general way such inspection.

2. Exceptions to the general rule of grading will be found under the heading for each kind of lumber.

3. Lumber must be inspected and measured as the Inspector finds it, of full length and width. He shall make no allowance for the purpose of raising the grade.

In inspecting all lumber, both sides of the piece shall be taken into consideration in making the grade; bearing in mind that 90 per cent of all lumber only shows one face when finished.

4. Lumber shall be well manufactured, of even thickness, and have parallel edges, and all ragged and bad ends shall be trimmed off.

5. Tapering lumber shall be measured at one-third the length of the board from the narrow end.

6. All lumber shall be tallied surface or face measure, the tally counted up, and the one-quarter

or one-half added to the total where the lumber is one and one-quarter or one and one-half inches thick, and two inches and thicker to be multiplied by the thickness.

In the measurement of all lumber, fractions exactly on the one-half foot are to be given alternately to the buyer and seller; the fractions below the one-half foot are to be dropped, and all fractions above the half foot are to be counted to the next higher figure on the board rule.

7. The standard lengths are four to sixteen feet. Standard thicknesses are $\frac{3}{8}$, $\frac{1}{2}$, $\frac{5}{8}$, $\frac{3}{4}$, 1, $1\frac{1}{4}$, $1\frac{1}{2}$, 2.

8. Standard Grades are Firsts and Seconds, Wagon Box Boards, Selects, Red Common, No. 1 Common, No. 2 Common and No. 3 Common.

STANDARD DEFECTS.

Each one of the following items constitute a standard defect.

(a) One knot one and one-quarter inches in diameter.

(b) Two knots not exceeding in extent one standard knot.

(c) Worm holes, grub holes or rafting pin holes not exceeding in extent or damage one standard knot.

(d) Heart, shakes, rot or dote not exceeding in extent or damage one standard knot.

(e) Splits are not to exceed twelve inches in length in Firsts, or one sixth the length of the piece in Seconds; in the aggregate not more than 20 per cent of the whole in either quality may be so split.

(f) Sap to one-fifth the width of the board in the aggregate.

(g) One bark edge or wane not to exceed one inch in the aggregate, running not to exceed one-third the length of the board, and only showing on one side and to be measured.

EXPLANATIONS OF STANDARD DEFECTS.

(a) Ordinary season checks are not to be considered defects.

(b) Black stain is not a defect if planing it once will remove it.

(c) Sap shall be considered bright that will show bright after planing.

(d) Splits that do not diverge more than one inch for each foot in length are straight splits.

(e) A straight split not exceeding six inches in length in one end of a piece of lumber, eight inches and over wide, shall not be considered a defect.

(f) Sound heart in Firsts and Seconds if longer than the width of the piece will reduce it to the next lower grade.

(g) In grades below First and Second, boards with one clear face eight inches and over wide shall be raised one grade.

(h) The location of defects in a piece has much to do with its value, and should have great weight in deciding the grade.

(i) Wide pieces of lumber that would take two or three standard knots may have one large knot, equal to two or three standard knots if there are no other defects.

(j) The rules for the inspection of lumber are intended to define the poorest piece that will go in a given grade. Where the defects are slightly beyond the specifications, making it a line board, twelve foot and longer lengths should be given advantage in grade; ten foot and shorter lengths reduced.

(k) All widths and lengths mentioned in these rules shall be inclusive.

GUM

FIRSTS AND SECONDS.

Firsts and Seconds are combined as one grade. This grade shall show one red face.

Firsts shall be six inches and over wide; ten, twelve, fourteen and sixteen feet long, and free from all defects except in pieces eight inches and over wide, which shall admit of one standard defect.

Seconds are six inches and over wide, eight to sixteen feet long; six and seven inches wide will admit of one standard defect; pieces eight, nine and ten inches wide will admit of two standard defects; pieces eleven, twelve and thirteen inches wide will admit three standard defects; except ten foot lengths which will admit two defects. As widths increase defects may increase in proportion. This grade will admit 15 per cent of ten foot and 5 per cent of eight foot lengths. Eight foot lengths must grade first in quality.

WAGON BOX BOARDS.

Lengths, 12, 14 and 16 feet.

Widths, 8 to 12 inches, and 13 to 17 inches.

Thickness, one inch.

In Box Boards bright sap or slightly discolored sap that will dress up sound, not necessarily bright but not black, admitted.

One sound knot not to exceed one inch in diameter, showing on one side only, will be admitted in this grade.

Splits in 12 foot may be fifteen inches long, or any defect that will cut off leaving the board 10 feet 6 inches long. 14 feet is used for making one side 10 feet 6 inches, and one end 3 feet 6 inches, so a

split is a serious defect in this length; but ten per cent of all 14 feet in a given lot may have one split not to exceed 12 inches in length, 16 feet may have one standard knot, showing through the piece, provided it will cut two pieces same as a 14 foot board.

SELECTS.

Selects shall grade the same as Firsts and Seconds, except that bright sap in any quantity is not to be considered a defect in this grade.

RED COMMON.

This grade shall show one red face.

The lengths are six to sixteen feet, not to exceed 10 per cent of six foot lengths. The widths are four inches and over.

Four and five inches will admit one standard knot or equal defects.

Six to eleven inches wide, eight and ten feet long, must work two-thirds clear face in not over two pieces.

Twelve inches and over wide, eight and ten feet long, must work two-thirds clear face in not over three pieces.

Six to eleven inches wide, twelve feet and over long, must work two-thirds clear face in not over three pieces.

Twelve inches and over wide, twelve feet and over long, must work two-thirds clear face in not over four pieces.

No piece or cutting to be considered which is less than four inches wide and three feet long, but as the width increases the length may decrease, but the shortest cutting to be considered must be eight inches long and not less than eight inches wide. Two-thirds of this grade must be six inches

and over wide. Pieces six feet long must be clear up to eight inches wide; over eight inches wide will admit one standard defect.

No. 1 COMMON.

Shall grade the same as Red Common, except that discolored sap is not to be considered a defect in this grade.

No. 2 COMMON.

The lengths are four to sixteen feet. The widths are three inches and over. Pieces four feet long must be clear.

Pieces six feet long and longer must cut 50 per cent clear face.

No piece or cutting to contain less than one foot face measure.

Black sap is not to be considered a defect in this grade.

No. 3 COMMON.

The lengths are four to sixteen feet. The widths are three inches and over, and must contain at least 25 per cent clear face cutting. No piece or cutting to contain less than one-half foot face measure.

Black sap is not to be considered a defect in this grade.

CYPRESS GRADING RULES

❁ Southern Cypress Lumber Association ❁

In Effect February 22nd, 1897.

ADOPTED BY

THE HARDWOOD MFRS.' ASSN. of the U. S.

January 28, 1903.

Tank Stock.—Shall be 5" and over in width, 1¼" to 4" thick and 8' and over long. Pieces up to 7" shall be free of sap. Pieces wider than 7" may have 1" of sound sap on one edge, not to exceed half the length and half the thickness of the piece. In all widths, sound knots that do not impair its usefulness for tank purposes may be admitted.

1st and 2nd Clear.—Shall be 8" and over in width. Pieces 8" to 10" may have 1" of bright sap on each edge, or its equivalent on one edge, otherwise they must be clear. Pieces 10" and under 12" wide may have 1½" of bright sap on each edge, or 3" on one edge, and one standard knot 1¼" in diameter.

Pieces 12" wide may have one standard knot and 2" of bright sap on each edge, or the equivalent on one edge; or in lieu of sap may have two standard knots or their equivalents. Pieces wider than 12" may admit of defects in proportion as width increases. Pieces 14" and wider may have one straight split not over 10" to 12" long, when comparatively free from other defects. Slight season checks allowed in above grade.

Selects.—Shall have one face side and be 7" and over in width. Pieces 10" and under in width shall admit two standard knots of 1¼" in diameter, and an additional standard knot for every two inches in width, over 10". Bright sap not considered a defect. Unsound knots that do not go through the piece to

be allowed. Pieces free from other defects, 10" and over wide, to admit pin worm holes on one edge one-tenth the width of the piece. Season checks, no defect. Slight wane on 10" piece and over, allowed on one side, not over 3 feet in length. When no other defects appear, slight amount stained sap may be allowed. Pieces 10" and over in width may have a straight split not to exceed 12" in one end, when comparatively free from other defects.

Shop.—Shop to be 6" and over in width, 8' and over in length, and to include all lumber that will not go into above grades, but that will cut for shop use 60 per cent clear of waste.

Merchantable or Common.—May be any width, admitting sap, knots, shake or peck, when the strength is not impaired.

Strips.—4" to 6" strips shall be graded A, B, C, D, and read the same as flooring grades.

Siding.—"Clear and A" siding may have 1" of bright sap on thin edge, and may contain one small sound knot.

"B"—May have $\frac{1}{3}$ of face bright sap if otherwise clear, or in lieu of $\frac{1}{3}$ sap, may contain two small sound knots.

"C"—May be all bright sap or may have one to five knots, the whole not aggregating over 3", or knots or other defects that can be removed in two cuts with waste not exceeding 12" in length, or three pin worm holes, and may have check or split at one end, not exceeding 12" in length.

"D"—May have stained sap and pin worm holes or may have other defects that will not cause a waste to exceed $\frac{1}{3}$ the piece.

Dressed Finishing.—Seven inches (7") and up random width to be two grades, as described in 1st and 2nd Clear and Select.

Flooring, Ceiling and Partition.—Clear must be free of sap and defects.

"A"—May have 1" bright sap on one edge, may contain one small sound knot, or may have bright sap $\frac{1}{4}$ its width on one end for not exceeding two feet from end.

"B"—May have $\frac{1}{3}$ of its face bright sap if otherwise clear, or in lieu of bright sap, contain two small sound knots, or may have a split not to exceed 9" at one end.

"C"—May have all bright sap, or may have one to five knots, the whole not aggregating over 3", or knots or other defects that can be removed in two cuts with waste not to exceed 12" in length, or may have three pin worm holes, or may have checks or split at one end, not to exceed 12" in length.

"D"—May have stained sap and pin worm holes, or may have unsound knots or other defects that will not cause a waste to exceed $\frac{1}{3}$ of the piece.

Dressed Finishing.—Strips 1, $1\frac{1}{4}$ and $1\frac{1}{2} \times 4$ to 6 inches wide, to be graded as 1st and 2nd Clear and Select. The above 1st and 2nd Clear Strips, which are 1, $1\frac{1}{4}$ and $1\frac{1}{2}$ thick shall have one heart face, and will admit one inch sap, on one edge. Select may be all bright sap, or in lieu of sap may contain two standard knots. 2×4 and 2×6 to be graded Clear and Select as described in above 1, $1\frac{1}{4}$ and $1\frac{1}{2}$ Strips.

Squares.—Squares to be graded Clear and Select 4×4 to 10×10 . A Clear Square to admit $\frac{1}{4}$ its size of sap on one corner. Select may have half bright sap.

SHINGLES.

Best.—A dimension shingle, 4, 5, and 6 inches, each width separately bunched, sixteen inches long, five butts to measure two inches, all heart free of shakes, knots and other defects.

Primes.—Dimension, each width separately bunched, sixteen inches long, five butts to measure two inches, admitting tight knots and sap, free of shakes and other defects, but with no knots within eight inches of the butt.

Extra "A."—Same as Primes, except random width and may admit of shingles fourteen inches long.

Clippers.—Any shingles which are sound for five inches from the butts—worm holes excepted—and two and one-half inches or up in width.

WEIGHTS.

	Lbs. per M.
Lumber, rough, 2 inches and under.....	3000
Lumber, rough, 2½ and 3 inches.....	3500
¾ inch flooring and ceiling.....	2300
¾ inch ceiling.....	1600
½ inch ceiling.....	1300
¾ inch ceiling.....	1000
½ inch bevel siding.....	1000
Shingles, all grades.....	300
¾ inch plaster lath.....	500
¾ inch fence lath.....	900
1¼ x 1¼ x 4 D & H Pickets.....	1600
¾ x 2½ x 4 D & H Pickets.....	1800
2 inch O. G. Battens.....	500
2½ inch O. G. Battens.....	600
3 inch O. G. Battens.....	700

GAUGES FOR MATCHED LUMBER.

Flooring.—1x4 and 1x6 shall be ¾ x 3¼" and ¾ x 5¼".

1¼" flooring shall be 1⅜".

Ceiling.—¾" shall be ⅝", ½" shall be ⅞".

¾" shall be ⅞", ¾" shall be 1⅞",

and the widths shall be the same as flooring.


DOYLE-SCRIBNER LOG SCALE.

OFFICIAL SCALE OF
The Hardwood Manfrs.' Ass'n of the United States.

Length in Feet.

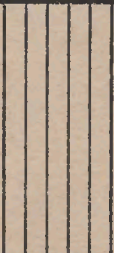
	8	10	12	14	16	18	20	22	24
10	18	23	27	32	36	41	46	50	54
11	24	31	37	43	49	55	61	67	74
12	32	40	48	56	64	72	80	88	96
13	40	50	61	71	81	91	101	111	122
14	50	62	75	88	100	112	125	137	150
15	60	75	91	106	121	136	151	166	181
16	72	90	108	126	144	162	180	198	216
17	84	106	127	148	169	190	211	232	253
18	98	122	147	171	196	220	245	269	294
19	112	141	169	197	225	253	280	309	338
20	128	160	192	224	256	288	320	352	384
21	144	181	217	253	289	325	361	397	433
22	162	202	243	283	324	364	404	445	486
23	180	226	271	313	359	406	452	496	541
24	200	250	300	350	400	450	500	550	600
25	220	276	331	386	441	496	551	606	661
26	242	302	363	423	484	544	605	665	726
27	264	330	397	463	530	596	661	726	794
28	291	363	436	509	582	654	728	800	873
29	305	381	457	533	609	685	761	838	914
30	328	411	493	575	657	739	821	904	986
31	355	444	532	622	710	799	888	976	1065
32	368	460	552	644	736	828	920	1012	1104
33	392	490	588	686	784	882	980	1078	1176
34	400	500	600	700	800	900	1000	1100	1200
35	438	547	657	766	876	985	1095	1204	1314
36	462	577	692	807	923	1038	1152	1268	1384
37	514	644	772	901	1029	1158	1287	1415	1544
38	534	669	801	934	1068	1201	1335	1468	1602
39	560	700	840	980	1120	1260	1400	1540	1680
40	602	752	903	1053	1204	1354	1505	1655	1805
41	636	795	954	1113	1272	1431	1590	1749	1908
42	671	840	1007	1175	1343	1511	1679	1846	2014
43	698	872	1046	1222	1396	1571	1745	1918	2092
44	740	925	1110	1295	1480	1665	1850	2035	2220
45	759	949	1139	1329	1518	1707	1898	....	....
46	793	991	1190	1388	1587	1785	1983	....	....
47	828	1035	1242	1449	1656	1862	2070	....	....
48	864	1080	1296	1512	1728	1944	2160	....	....

The above rule is a combination of the Doyle and Scribner rules. Doyle 27 inches and under. Scribner 28 inches and over.



Additional copies of these rules can
be had upon application to

LEWIS DOSTER, SEC'Y
505 SCHULTZ BLDG., COLUMBUS, OHIO



Lumbermen's Printing Co., St. Louis

#23

1+2

Conours

2/6

culls 89

Aug 17-03

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7 11
8 1
9 III
10 1
11 III
12 III
13 III
14 III
15 III
16 III
17 III
18 III
19 III
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21 III
22 II ✓ 1379/-
23 I ✓ 1387
24 III ✓ 225
25 III ✓ 2018
26 I ✓ 1312
27 III ✓ 1261
28 I ✓ 7532
29 I ✓
30 III

5 X 39
6 X 43
7 X 55
8 X 71
10 X 50
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14 X 15
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24663
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1 X 23
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3 X 27

Saw Stewart

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L. G. Glass

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Saw Stewart

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Commons B/6

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L. G. Glass

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Cull \$9

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L. G. Glass

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L. G. Glass

(2)

Saw Steer

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1902

L. G. M. W. E. Glass

Oct. 10	To Chk. advanced on		May 27 By 4307 ft 1+2 Young 4d	28 ⁰⁰	120.59
	Elkanah Young timber	400.00	" " 10470 " Com	19 ⁰⁰	198.93
Dec 18	To Chk. advan on E Young timber	150.00	" " 16612 " Cues	10 ⁰⁰	166.12
June 10	" Wagon L.Y.	57.00	June 10 " 862 " 1+2	28 ⁰⁰	24.13
" "	" " W.E.	47.00	" " 2572 " Com	19 ⁰⁰	48.86
" 11	" 90 Da. Note	306.00	" " 4271 " Cues	10 ⁰⁰	42.71
" 15	" 418 th Hay L.Y.	115 4.80	" " Discount		6.00
" "	" 139 th " W.E.	115 1.59	July 1 By 4128 ft. 1+2 Pop.	28 ⁰⁰	115.58
" "	" King boat	25	" " 8903 " Com.	19 ⁰⁰	169.15
" 17	" Paid Burk & Brown	2.50	" " 6802 " Cues	10 ⁰⁰	68.02
" "	" Gum Coats	5.75	" " 9006 ft. 1+2 Pop.	28 ⁰⁰	252.16
" 18	" 233 th Hay L.Y.	115 2.67	" " 19625 " Com.	19 ⁰⁰	372.87
" "	" 152 th " W.E.	115 1.74	" " 11854 " Cues	10 ⁰⁰	118.54
July 24	" 90 Da. Note	510.00	" " 7532 " 1+2 Pop.	23 ⁰⁰	173.23
" 28	" Saw 315 L.Y. file	33.00	" " 24563 " Com	16 ⁰⁰	393.00
Aug 4	" 600 ft. 1 Com Ceiling	6.00	" " 16074 Cues	9 ⁰⁰	144.66
		149860			240455

2404.55⁻
 149860
 100595

JOHN P. MORTON & Co.,
INCORPORATED,
LOUISVILLE, KENTUCKY.

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Glass

Agreement Made this the 3rd day of
January 1802 By & Between S. G. & J. P.
Glass Partys of the first Part & A. &
N. S. Johnsons Party of the second Part
all of Lee Co. Va. witnesses that the
first Party has this day sold to the
second Party the following Summs.
for Poplar \$900 Shipping Culls \$16⁰⁰ for
Common and \$23⁰⁰ for 1 D & S. and for
oak Shipping Culls \$7⁰⁰ Common \$12⁰⁰ 102
\$20⁰⁰. and for Sym & Buckeye \$12⁰⁰ Lag
Run Mill Culls out. It is understood
that the Poplar conveyed in this Contract
is located as follows. about 200,000 ft on
the C. V. young Sand on Wallens Creek
Lee Co. Va. and 125,000 ft on the Stout
Sand and about 125,000 ft on the
Azer young Sand Boath on Wallens
Creek Lee Co. Va. and about 50,000 ft
James Edwards yard on Powell River
near Tip Top School house about 50,000 ft
Hans Sackharts yard about 50,000 ft
Wm. Horton Sand near Rallens Chapel
all in Lee Co. Va. and any other Poplar
the first Party may Manufactory during
the years of 1802 Subject to Condition of
this Contract. It is agreed that the amount
of Red & White oak shall not Exceed

50,000ft and the amount of Lym & Buckey
shall not exceed 50,000ft. Said first Party
agree to cut all the Lumber Passable
one x six & multiplies of six ~~in~~ ~~and~~
where they can do so with out Sawing
the grade of the Lumber, and agree
to cut $\frac{3}{4}$ $\frac{1}{4}$ $\frac{3}{4}$ But are not to cut to
Exceed 50,000 ft $\frac{3}{4}$ and not Exceed 100,000
ft $\frac{1}{4}$ and to $\frac{3}{4}$ cut as much $\frac{3}{4}$ as
the Log will admit Stack thicker
than $\frac{1}{4}$ to cut so as to grade Common
and Better as much as Passable. In the
 $\frac{1}{4}$ 6 in Clear to grade as ones & twos. and
when as the first Party Requires assistance
in the Manufacture of the above Lumber
is agreed to advance to them \$100⁰⁰ and
the zero, yard, and 200⁰⁰ and the
Smith. Stant yard, with in ten days
from this date. after advancements to
Be Paid as the Work Progresses, But not
to Exceed \$8⁰⁰ Per M. ft. When Each yard
is all Sazed as one stick Said advance-
ments may Be made By a negotiable Note
and if so Said second Party is to Bear
the Discount in Excess of 6% Per annum.
and shall Said first Party not deliver
Enough Lumber to Pay Said advancements
By the time the Notes mature they

agree to Pay 6% Per annum and the
same Notes Paid. and when as
much as 50,000ft has Been delivered
from any one yard the second Party
agrees to settle for the same Retaining
the Proportion amount of money that
may have Been advanced and the yard
It is Understood that the first Party
here By Grants to the second Party a
Lease upon the Sago Lumber as standing
timber upon which the advance may
Be made and to furnish a Receipt from
the owner of the timber any amount
so Paid Said Lumber is to Be delivered
during the year 1902 at the second
Partys mill at Pennington Gap Va

Copy.

H. Johnson
H. L. Johnson
L. E. Gloss
J. P. Gloss

xx "A"

Unit of Damages Claimed by
 J. P. Glass on account of lumber sold to them under contract of Jan. 3, 1902, at the prices therein stipulated, and afterwards re-sold to the said Johnsons by the said Glasses by misrepresentations at a higher price.
 Price per contract Jan. 3, 1902. Price paid on re-sale.

Hinkle & Banner Yard

Pop. #	Aug. 21, 1902 Pop. #
1039' 182 @ 23 — 23.89	1039' 182 @ 25 — 25.97
8924' Corn 16 — 142.79	8924' corn 17 — 151.71
3457' 182 " 23 — 79.51	3457' 588/4 182 27 — 73.34
4725' Corn — 16 — 75.60	4725' " corn 18 — 85.05
727' Cull — 9 — 6.54	727' cull 10 — 7.27
378' 182 — 23 — 8.67	378' 182 Pop # 25 — 9.45
5194' Corn — 16 — 83.10	5194' corn " " 17 — 88.30
156' 182 Oak 20 — 3.12	156' 182 Oak 22 — 3.43
647' Corn " 12 — 7.77	647' Corn " 13 — 8.41
2711' Cull — 7 — 18.97	2711' cull " 8 — 21.68
449.98	494.61
To Balance <u>over Paid</u> 44.63	494.61

Alkanah Young Yard

May 29	June 10	July 1st	July 28
4307' 182 Pop. 23 — 99.06	4307' 182 # 28 — 120.59	4307' 182 # 28 — 115.58	4307' 182 # 28 — 115.58
10470' Corn " 16 — 167.52	10470' corn 19 — 198.93	8903' corn 19 — 169.15	8903' corn 19 — 169.15
16612' Cull " 9 — 149.51	16612' cull 10 — 166.12	6802' cull 10 — 68.02	6802' cull 10 — 68.02
862' 182 " 23 — 19.92	862' 182 28 — 24.13	9006' 182 28 — 252.16	9006' 182 28 — 252.16
2572' Corn " 16 — 41.15	2572' corn 19 — 48.86	19625' corn 19 — 372.87	19625' corn 19 — 372.87
4271' Cull " 9 — 38.44	4271' " 10 — 42.71	11854' cull 10 — 118.54	11854' cull 10 — 118.54
4128' 182 # 23 — 44.94	4128' 182 # 28 — 115.58	11854' cull 10 — 118.54	11854' cull 10 — 118.54
8903' Corn 16 — 142.45	8903' corn 19 — 169.15	11854' cull 10 — 118.54	11854' cull 10 — 118.54
6802' cull 9 — 61.22	6802' cull 10 — 68.02	11854' cull 10 — 118.54	11854' cull 10 — 118.54
9006' 182 23 — 207.13	9006' 182 28 — 252.16	11854' cull 10 — 118.54	11854' cull 10 — 118.54
19625' corn 16 — 314.00	19625' corn 19 — 372.87	11854' cull 10 — 118.54	11854' cull 10 — 118.54
11854' cull 9 — 106.69	11854' cull 10 — 118.54	11854' cull 10 — 118.54	11854' cull 10 — 118.54
1442.03	1697.66	1697.66	1697.66
To Balance <u>over Paid</u> 255.63	1697.66	1697.66	1697.66

Total Amount over-paid for
 Reasons stated above is \$300.26.

Statement of Damages
to R.
with A. Johnson's depo.

Damages sustained by the
Pltffs on account of the failure of
the Defts to deliver to them the follow-
ing Lumber as per Contract of Jan. 3, 1902.
An Poplar lumber sold to R. C. Duff,
and Letcher Horn.

On 45724'	182 Pop. @ \$17 Per M.	777.30
" 98198'	Corv. " " "14 " "	1374.77
" 73067'	Cull " " "8"	621.07
" 6561'	Lynn " "8	52.48
" 18000'	Oak " "8 failed to be delivered on the Edwards' land	144.00
		<u>2969.62</u>

The above shows the damages claimed by the Pltffs on account of their
being deprived of the privilege of selling said lumber in the rough at
the market price. The above prices being the difference between the
market price and the contract price.

The Damages on the fore-
going Lumber sustained by
the Pltffs by the failure of the
Defts to deliver the same and thus
depriving the Pltffs of manufact-
uring the same, is as follows:-

45724'	182 " \$17.00	777.30
98198'	Corv. @ \$18.30	1797.02
73067'	Cull " \$11.00	803.73
6561'	Lynn "13.00	85.29
18000'	Oak "8.00	144.00
		<u>3607.34</u>

The above prices show the difference between the
contract prices and the market prices for man-
ufactured lumber.

Statement of Anna
ges to 1.
with A. Johnson's depo.

John P. Morton & Co.
INCORPORATED
LOUISVILLE, KY.

1901

L. G. & J. P. Glass

Per

Jan 19	To Bal. on Watch	8.75	Apr. 9	By Sawing 38566 ft. Lgs 300	115.69
" 21	" Cash	25.00	July 27	" 6.229-1+2 Pp. @ 23°	142.81
Feb 8	" Gloves 75 Shoes 50	1.25	" "	" 18.786 Com " 16°	300.58
April 9	" Chk. April 22	90.69	" "	" 13201 Cues " 9°	118.81
1901 " "	" Iron	10	Aug 19	" 1930 ft. 1+2 Pp 23°	44.39
Jan 8	" Chain 16.5	✓ 16.5	" "	" 11.803 Com " 16°	188.03
" 24	" Banjo 4.75 Hip 45 Clock 75	✓ 5.95	" "	" 7779 Cues " 9°	70.01
✓ " 27	" Notes 90 Pa. Stout Young 4d. 310.00		" "	" 3.945 Lym & Buck 12°	47.94
✓ Feb 20	" " 90 "	✓ 500.00	" 21	" 1039 ft. 1+2 Pp 4/4 25°	25.97
✓ Apr. 7	" " 90 " Horton 2d. ✓ 200.00		" "	" 8924 Com " 4/4 17°	151.71
✓ May 22	" " 90 " Stout 2d. ✓ 550.00		" "	" 7892 Cues 4/4 9°	71.03
✓ June 1	" " 90 " Horton "	✓ 125.00	" "	" 3457 ft. 1+2 Pp 4/4 27°	98.34
✓ June 13	" " 90 " Stout & C. 2d. 450.00		" "	" 4725 Com " 5/4 18°	85.05
✓ July 14	" " 90 " B. Young "	✓ 700.00	" "	" 727 Cues 5/4 -	7.27
✓ " 26	" Chk. H. & Banner 2d. 300.00		" 21	" 1355 ft. 1+2 Pp Stout 2d 23°	31.17
" 27	" Hades 38.196. 5.73		" "	" 5496 Com " " 16°	87.94
Aug 2	" 75 * Bacon 15 3.75		" "	" 3364 Cues " 9°	30.28
✓ " 19	" 90 Pa. Notes Edwards 2d. 400.00		" "	" By 1389-1+2 Pp. Seef 23°	31.94
" 19	" Five Hilly Lm 4.00		" "	" 8354 Com " " 16°	133.66
✓ " 21	" Chk. 150.00		" "	" 5437 Cues " 9°	48.33
" 22	" 2 Sks. Sact 1.80				1825.95
Oct 9	" block 90		Oct 8	By 1654-1+2 Oak 20°	33.08
" 17	" Chk. given July 27 th /02		" "	" 2905 Com " 12°	34.86
	advance on lumber on } 300.00		" "	" 3528 Cues " 7°	25.05
	Contract made that day } " "		" "	" 938-1+2 Pp 23°	21.57
			" "	" 5773 Com " 16°	92.37
			" "	" 4163 Cues " 9°	37.46
			" "	" 15.701 Lym & Buck 12°	188.41
			" 17	By Book 11 - pg. 1	1876.22
					4134.97

4134.97

4134.97

— OVER —

DT

Cr.

L G M S P Glass

1902
Nov 4

1	To P. 1								
2	To Chk. bal Lockout	1876	12	Nov. 4	By 4/6 Inst. on 500 ft. on 500 ft. notes			5	00
3	Yd. J. P. G.	280	92	Dec 18	" Enor page 283 book 10			30	00
4	To Inst 5.77 + 148	7	25	1903 Jan 17	" 378 ft. 1 + 2 Popr H. + Banner Yd			9	45
5	" Brel Pully + Shift Coen	26	95	"	" " 5194" Coen " " " "			88	30
6	Bice Mouldy	1	89	"	" " 6748" Cues " " " "			60	73
7	2010 Rev. Siding / Con	3	0	15	Mar 23	" 1491 - 1 + 2 Popr. Hoover " 23"		34	29
8	935 ft. Ceiling 10	1000	9	35	"	" " 11.029 Coen. " " " 16"		176	46
9	270 " " 1 " 1000	2	70	"	"	" " 5748 Cues " " " 9"		51	73
10	1992 ft. 2 Coen Cily 1000	19	92	"	"	" " 13.652 Lynn " 12"		163	82
11	550 " 3/8 " " " 800	4	40	"	"	" " 715 Oak - 1 + 2 " 20"		14	30
12	Dec 9 - 3 Bags Salt L. 99.90	2	70	"	"	" " 1994 " Coen. " 12"		23	92
13	✓ " 18 To Chk. H. + B. yd. L. 91	150	00	"	"	" " 1554 " Cues " 7"		10	87
14	" " " Saw 250 whip 75	3	25	"	"	" " 1 Load Lumber " 7"		7	00
15	March 7 To Chk. C. V. y. yard	580	00	"	"	" " Inst. Horton yard " 3		25	
16	" 23 To Inst. on Horton yd.	14	34	" 26	By 156 ft. Oak 1 + 2		2000	3	12
17	" " " Shoes Horton	4	50	"	"	" " 647" " Coen " 12"		7	76
18	" " " Chk. Horton yd.	"	"	"	"	" " 2711 " Cues " 7"		18	97
19	" to Bal. Lumber Credit to date 141	80		June 13	By 1012 " 1 + 2		2000	20	24
20	1903 June 13 To Chk. to Coen Lumber	"	"	"	"	" " 3033 " Coen. " 12"		36	39
21	✓ taken up this date	216	31	"	"	" " 1857 " Cues " 7"		12	99
22		3372	65	"	"	" " 658 Popr 1 + 2 " 23"		15	13
23		3371	75	"	"	" " 4023 " Coen. " 16"		64	36
24				"	"	" " 3362 " Cues " 9"		30	25
25				"	"	" " 2246 Lynn " 12"		26	95
26				"	"	" " 1 Lot Green Lumber		10	00
27								\$	1193.28

3372 65
1195 28
2177 37
1008 30
187
625
3193 79
1005 25
2187 84

Virginia Mixed to Nutt

I A Johnson, a member of the firm of A & M Johnson does solemnly swear that there has been a checkered on the yard known as the Day Creek yard to sum of \$1,000 & 30. and understand this to be the yard that has been hauled to Suffolk and that \$510.00 was advanced to S. G. Glass, July 21, after the lumber delivered to A & M Johnson had been received, and that S. G. Glass gave as his reason for hauling said lumber to Suffolk was that he could get more for it than he was getting of Johnson and deems that they have at any time refused to receive lumber from either S. G. or J. P. Glass, but is willing and anxious to do so at any time they will permit, and furthermore that S. G. & J. P. Glass have told him that they were well satisfied with the grade given them.

Wise County Va to wit -
Sworn to before me in my
County aforesaid, this Sept. 18. 1908
C. J. Edwards Notary Public in
Wise County Va

Virginia, Wise County Court;
I A. Johnson a member of
the firm of A & H. G. Johnson
do solemnly swear that A & H. G.
Johnson have advanced
to J. P. & L. G. Glass, on the
lumber in controversy in
the suit of A & H. G. Johnson
vs L. G. & J. P. Glass, at least
\$2000.00, a bill of particulars
of which said advancement
is herewith filed, as

Given under my hand this
14 day of Sept. 1903

va. Wm. Canby - A. W.
Sworn to before me this
14 day of Sept. 1903.

C. J. Edwards Notary Public
for Wise County Va.

Filed Sept 18, 1903

H. A. W. Stone

Judge

Copies of account

Virginia, Wise County, to wit:-
I G. B. Douglas, do solemnly
swear that one day last week
heard J. P. Glass, one of the
defendants in the suit of A. Y. H. B.
Johnson vs J. P. & G. B. Glass
say that he was well pleased
with the grades and measurements
given by said Johnson, and
that he did not know why
G. B. Glass had acted as he did
in hauling said lumber to
Duffield, and that I also
know that the said A. Y. H. B.
Johnson have advanced
large sums of money to said
Glasses on the said lumber.
Given under my hand
this 18 day of Sept: 1903.
G. B. Douglas

Sworn to before me this
18 day of Sept: 1903

J. W. Kilgore Clerk
Wise County Court
Wise County Va

Individual - Book # - 11 - page 119

1903

John P. Glass.

July 27 To 1 Ladies Skirt

Sept. 15 " 1 Trunk

\$ 3.75

2.50

6.25

522445

256373

266070

~~330~~ ✓

233

1 ✓

57 ✓

119 ✓

97 ✓

1903

June 24 To Hay of Huff

Individual
M. E. Glass - Book 11-155

Dr.

Cr.

\$ 1.87

Individual Book 11-1997 Dr

Cr

L. G. Glass - Stickneyville - "Dry Creek" Yd.

1903

March 7 To Note 90 Da.

734 40

Apr. 2 " Trunk 4.75 Shoes 1.40 Lantern 90

7 05

" 15 " 90 Da Note

275 00

June 9 " Sewing Machine Needles Diver

05

" 24 " Hay 5.35 (Wade)

5 35

Aug 3 " 1 Whip by Jim Deboe

65

" 24 " Sangering 20

20

March 7 By Discount

1022 70

14 40

1022 70

14 40

1008 30

4/4		1/2 JP Glist at 9.02		Linn		532/6	
3	12		36	36	33		
4			56	56			
5		20	110	110			
6		48	126	126			
7		84	189	189			
8	8	224	200	200			
9	9	171	180	180			
10	10	270	130	130			
11		165	143	143			
12	12	204	120	120			
13	39	156	117	117			
14	14	140	182	182			
15	120	345	60	60			27
16	80	272	48	48			108
17	34	571	17	17			275
18	72	180	19	19			444
19	95	456	1733	1733			714
20	80	60					712
21	22	147					747
22	595	88					1220
23		48					935
24		75					864
25		3204					676
26							714
27							495
28							368
29							187
30							19
31							8505

$$\begin{array}{r} 8 \\ 5- \\ 4 \overline{) 13} \\ 8 \ 2 \ 5- \end{array}$$

$$\begin{array}{r} 3 \overline{) 650} \\ 217 \\ \hline 434 \end{array}$$

$$\begin{array}{r} 200 \\ .6- \\ \hline 10.00 \\ 434 \\ \hline 1434 \\ 325- \end{array}$$

A2

J D Glass Pot 08 408
Ann. 23

Henry & P. Quaker

75
675
838

H2

Cam

cul

3					
4			44		
5	5			235	
6				294	
7	7			455	
8	48			456	
9	27			441	
10	100			680	
11	33			429	
12	132			696	
13	52			468	
14	14			182	
15	60			390	
16	128			176	
17				68	
18	90			270	
19	38			133	
20				40	
21	42			105	
22	22			44	
23	23			46	
24	24			48	
25	845			50	
				5750	

Glass
Lockhart
yuna
Aug

95
176
300
438
560
496
441
620
396
382
91
14
30
36
4027
4031

31 3
41 4
51 5
61 30
71 7
81 48
91 27
101 40
111 22
121 12
131 39
141 237

N2			Cull			Cull		
4			||||	3	||||	||||	||||	||||
5			||||		||||	||||	||||	||||
6	1	6	||||		||||	||||	||||	||||
7	||	21	||||		||||	||||	||||	24
8	|||	32	||||		||||	||||	||||	224
9	||||	90	||||		||||	||||	||||	315
10	||||	80	||||		||||	||||	||||	41408
11	||||	55	||||		||||	||||	||||	252
12	||||	84	||||		||||	||||	||||	344
13	||||	65	||||		||||	||||	||||	414
14	||	28	||||		||||	||||	||||	410
15	||||	105	||||		||||	||||	||||	506
16	||||	96	||||		||||	||||	||||	252
17			||||		||||	||||	||||	182
18	||||	144	||||		||||	||||	||||	126
19	|||	57	||||		||||	||||	||||	45
20			||||		||||	||||	||||	80
21	||	42	||||		||||	||||	||||	57
22	|||	66	||||		||||	||||	||||	54
23			||||		||||	||||	||||	19
24	||	1069	||||		||||	||||	||||	3758
25	||	868	||||		||||	||||	||||	
		938						

20
 100
 288
 294
 360
 477
 650
 473
 480
 442
 182
 330
 560
 157
 486
 247
 60
 252
 154
 72
 75
 6053
 5750
 1303

24
 224
 315
 41408
 252
 344
 414
 410
 506
 252
 182
 126
 45
 80
 57
 54
 19
 3758

7
 136
 283
 294
 630
 688
 351
 440
 506
 204
 104
 14
 120
 64
 3756
 403
 7787

375
 237
 3998
 X

Totals:

Corn

Culls

Linn

152

5750

4027

237

6053

3752

3756

11803

7779

3995

16

9

12

80818

70011

47940

11803

18884

4031

7990

3758

3995

7789

4794

9

70001

237

Correct

3756

3993

12

47916 Correct

5750

6053

11803

16

70818

11803

18884

Correct

280
1000
440

4439

1888

2001

4794

18122

43280

61402

July 26

500.00

861

1069

1930

23

5790

3860

4439

845

1069

1914

23

5742

3828

44022

Correct

142

JP Glass 18 8 Oak
can end

3			|||||	
4		||	8	|||||
5		|||||	90	|||||
6	|||||	36	|||||	174
7	|||||	98	|||||	224
8	|||||	200	|||||	272
9	|||||	144	|||||	207
10	|||||	170	|||||	320
11	|||||	123	|||||	264
12	|||||	192	|||||	384
13	|||||	104	|||||	247
14	|||||	224	|||||	252
15	|||||	90	|||||	103
16	|||||	96	|||||	96
17	|||||	34	|||||	68
18	|||||	54	|||||	54
19	|||||	19	|||||	37
20	|||||	1714	|||||	20
21	|||||	1654	|||||	63
22	|||||	87	|||||	2905
23	|||||	2572	|||||	X
24				
25				

Back to go

1654
33086

30
140
200
276
273
336
306
270
407
432
299
350
103
32
85
18

3578

X

82664

241454
158790
82664
241454

33724

337266
119524
217742
1100831
625-
187
329384
82664
236720
36800
199917

#1
 L. G. & J. P. Glas to
 A & M. Johnson, Dr.,
 An account of lumber Contracts
 dated Jan. 3, 1902, July 26, 1902, and
 October 10, 1902.

1901.				
Jan	19	Balance on watch.	8	75v
"	21	Cash	25	00v
Feb	8	Gloves 75 Shoes 50.	1	25v
April	9	Check	90	69v
"	"	Iron		10v
				1 65v
1902		Chain	5	95v
Jan	8	Bangs + 75 Grip 45 clock 75	310	00v
"	24	90-day note on Stout and young yard	500	00v
"	27	" " Lockhart yard	200	00v
Feb	20	" " Horton yard	550	00v
April	1	" " Stout yard	125	00v
May	22	" " Horton yard	450	00v
June	6	" " Stout & C. young yard	700	00v
"	13	" " C. young yard	300	00v
July	14	ck. Hinkle & Banner yd.	5	73v
"	26	Grading & Handling 38190	3	75v
"	27	25 lbs Bacon	400	00v
Aug	2	90-day note Edwards yard	4	40v
"	19	Time Handling lumber	150	00v
"	"	ck on Banner Stuff	1	80v
"	21	2 Sacks Salt		90v
"	22	clock		
Oct	9	ck given July 27, 1902, as advancement	300	00v
"	17	on contract made that day		
Nov	4	ck, Bal on Lockhart yard.	280	92v
"	"	Interest	7	25v
"	"	Belt, Pulley, Shaft, collar &c.	26	95v
"	"	Bill Mouldg 1.89, 2010' Sdg/com. @ 15.15	32	04v
"	"	735' Clg 1com. @ 10.00	7	35v
"	"	270' " " " 10.00	2	70v
"	"	1992' " 2 " 1/2" 10.00	19	92v
"	"	550' " " 3/4" 8.00	4	40v
Dec	9	3 Bags Salt @ .90	2	70v
"	18	ck. on Hinkle & Banner yard.	150	00v
"	"	Saw 2.50 whip 75	3	25v
				4674 45
Oct	10	ck advanced Okamah young timber	400	00v
Dec	18	" " " "	150	00v
				5224 45

#1.		Credits during the year, 1902.			
1901.					
April	9	By saving 38565' Logs.		115	69✓
July	27	" 6209' 182 Pop. 23		142	81✓
"	"	" 18786' Corn " @ 16	Stout yard	300	58✓
"	"	" 13211' Cull " "9		118	81✓
Aug	19	1930' 182 " 23 Lockhart "		44	39✓
"	"	11803' Corn. " 16 "		188	03✓
"	"	7779' Cull. " 9 "		70	01✓
"	"	3995' Lynn & Buckeye @ 12		47	94✓
"	21	1039' 182 Pop. Hinkle & Banner "		25	97✓
"	"	8924' corn \$17		151	71✓
"	"	7892' 4/4 cull "9		71	03✓
"	"	3457' 58 8/4 182 @ 27		93	34✓
"	"	4725' 5" 8/4 Corn "18		85	05✓
"	"	727' culis @ \$10		7	27✓
"	"	182 " " 23 Stout yard.		31	17✓
Aug	21	13555' 182 " " 23 Stout yard.		87	94✓
"	"	5496' corn " 16		20	28✓
"	"	3364' cull " 9		31	94✓
"	"	1389' 182 " 23		133	66✓
"	"	8354' corn " 16		48	33✓
"	"	5437' cull " 9		33	08✓
Oct	8	1654' 182 Oak "20 Lockhart yard.		34	86✓
"	"	2905' Corn " 12		25	05✓
"	"	3578' cull " 7		21	57✓
"	"	938' 182 Pop 23		92	37✓
"	"	5773' corn " 16		37	46✓
"	"	4163' cull " 9		188	41✓
"	"	15701' Lynn & Buckeye 12 "		5	00✓
Nov.	4	4% Int. on Lockhart yard on \$500.00		300	00✓
Dec	18	Error page 273, check, book 10		2563	75
To Balance due Plaintiffs Jan. 1, 1903				2660	70

		Credits during the year, 1903.			
Jan.	17	378' 182 Pop. Hinkle & Banner yard	9	43✓	
"	"	5494' corn " "	17	88	30✓
"	"	6748' cull " "	9	60	73✓
March	26	156' 182 Oak " "	22	3	43✓
"	"	647' corn " "	13	8	41✓
"	"	2711' cull " "	8	21	68✓
"	23	1491' 182 Pop Harton yard	23	34	29✓
"	"	11029' Corn " "	16	176	46✓
"	"	5748' cull " "	9	57	73✓
"	"	13652' Lynn " "	12	163	82✓
Footings 49.1				618	30

#2

Credits during the year, 1903
Footings from Sheet #11903
618 30

March	23	715'	Oak 182	Horton yard	\$20	14 30✓
"	"	1994'	Oak corn	"	12	23 92✓
"	"	1354'	" cull	"	\$7	10 87✓
"	"	One Load Lumber	"	"	"	7 00✓
"	"	Interest	"	"	"	3 25✓
June	13	1012'	1 x 2 Oak	"	20	20 24✓
"	"	3033'	Corn	"	12	36 39✓
"	"	1857'	Cull	"	7	12 79✓
"	"	658'	18 2 Pop	"	23	15 13✓
"	"	4023'	corn	"	16	64 36✓
"	"	3362'	culls	"	9	30 25✓
"	"	2246'	Lynn	"	12	26 93✓
"	"	One Load Lynn Lumber	"	"	"	10 00✓
May	29	4307'	18 2 Pop	Channah young yard	\$28	12059✓
"	"	10470'	Corn	"	19	19893✓
"	"	16612'	Cull	"	10	16612✓
June	10	862'	18 2 "	"	28	2413✓
"	"	2572'	Corn	"	19	4886✓
"	"	4271'	cull	"	10	4271✓
		Discount		"	28	6 00✓
July	1	4128'	18 2 "	"	19	11658✓
"	"	8903'	corn	"	10	16915✓
"	"	6801'	cull	"	10	6802✓
"	28	to aug. inclusive 18, 1903			28	25216✓
"	"	9006'	18 2 Pop	"	19	37287✓
"	"	19625'	Corn	"	10	11854✓
"	"	11854'	Cull	"	"	"
"	"	Cv. young or Stout yard				
"	"	7532'	18 2 Pop	"	23	173 23✓
"	"	24563'	Corn	"	16	393 00✓
"	"	16074'	cull	"	9	144 66✓
1903	Dec. 5	Credit on Edwards yard overlooked				36985
	March 7	By discount				14 40
						3692 85

1903

Jan 1	To Balance on year 1902	2660 70
March 7	90-day note on Dry Creek yard	734 40 ✓
" "	Ch. on C. Young yard	580 00 ✓
" 23	Interest on Horton yard	14 34 ✓
" 28	Shoes on " " to date	450 ✓
" "	Ch. Bal. " " to date	141 80 ✓
April 2	Trunk 4.75 Shoes 1.40 Lantern 90 Dry Creek yard	7 03 ✓
" 15	90-day note 275 Dry Creek yard	275 00 ✓
June 10	Wagon L.G. Glass on Elchanah young yard	57 00 ✓
" "	" W.C. "	47 00 ✓
" 11	90-day note	30 60 ✓
" 9	Sewing-machine needles	05 ✓
" 13	Ch. Horton yard to Bal.	216 31 ✓
" 15	Hay L.G. Glass 4.80 Hay W.C. Glass 1.59 Kingbolt .25	6 64 ✓
" 17	Ed. Burke & Brown	25 00 ✓
" "	Gum Coats	575 ✓
" 18	Hay L.G. Glass 2.67 Hay W.C. Glass 1.74	4 41 ✓
" 24	W.C. Glass Hay	1 87 ✓
" "	Hay Dry Creek yard	533 ✓
July 21	90-da note, Elchanah Young Yard	510 00 ✓
" 28	Saw 3.15 file 15 " "	330 ✓
" 27	1 Lady Spirit 3.75 Edwards yard	3 75 ✓
Aug 23	Whip to Jim DeBow Dry Creek yard	65 ✓
" 4	600' 1 con. Cg. Elchanah young "	6 00 ✓
" 24	Gumming Saw Dry Creek yard	20 ✓
Sep 15	1 Trunk 250 Edwards Yard	250 ✓
		5597 07
		5597 07

By Credits during year, 1903,
\$3692.85.

To Balance Jan. 1st, 1904, \$1704.22
To Interest on Bal. Jan. 1, 1903, 1 year 157.64
2063 86

Deft's account
Exhibit with
A. Johnson's Depts.

Locke
Yard.

142

To G Glass Kamen Gang you
Can Kamen Gang 903
Out

3					|||||	36	108
4				8	|||||	32	128
5				10	|||||	13	216
6	1	6	|||||	23	138	|||||	402
7			|||||	23	161	|||||	399
8	11	16	|||||	21	168	|||||	424
9	11	18	|||||	22	198	|||||	307
10	111	30	|||||	15	150	|||||	310
11	1111	44	|||||	14	154	|||||	396
12	|||||	60	|||||	15	180	|||||	300
13	1111	52	|||||	5	65	|||||	14
14			|||||	15	210	|||||	12
15	11	30	|||||	11	165	|||||	5
16	1111	64	|||||	8	128	|||||	12
17	11	51	|||||	13	221	|||||	7
18	111	54	|||||	6	118	|||||	10
19	1	19	|||||	4	76	|||||	7
20			|||||		140	|||||	5
21	111	63	|||||		105	|||||	4
22	1111	88	|||||		88		
23					48		
24	1111	192			50		
25	111	25			25		
		8624			99		

4279

15 2838

Common 8/9

Culls 8/0

July 31

3
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5
6
7 III
8 II
9 III
10 III
11 II
12 II
13 III
14 III
15 III
16 III
17 III
18 III
19 III
20 I
21 III
22 III
23 III
24 III
25 III
26 III

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23-1
24-1
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26-1

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16-1
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19-1
20-1
21-1
22-1
23-1
24-1
25-1
26-1

L. G. Glass

4430/1

Saw Stuart

1828

Commons 8/9

8/10

Culls

July 28

4

5

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7

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12

13

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18

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1

Saw Stems

3369

6.17/11

\$28

Com - \$19

July 30th 1903

\$10

new

Culls

4			
5			27
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7			
8			19
9			7
10			8
11			3
12			13
13			13
14			26
15			7
16			7
17			
18			10
19			2
20			4
21			9
22			4
23	2219/1-		1
24			6
25			4
26			3
27			1

5-2

49

5-5-

5-3

26

26

11

18

3700/-

Saw Stewart

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47

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L. B. Glan

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7

2371

42
30
1220

7532
 24563
 16074
 48149

19833
 40485-
 48279
 108607

21412
 181

428

com. 8/9

Cull. 8/9

Aug 8.

3 12

4

5

6

7

8

9

10 III

11 III

12 II

13 III III

14 III III

15 III

16 III III III

17 III II

18 III

19 III

20 I

21 III 19.05 ft. III I

22 III 18.58 ft. III III

23 22.19 ft. 9006 X

24 III

25 II

26 III

27 I

III

III III

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III III III

III II

III III III

III III

III III

III I

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III

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III

L. G. Glass

2.5.26 ft.
 - 7228
 - 6171 -
 - 3700
 19625 -
 X

1684 ft.
 4430 -
 3369 -
 2871 -
 1854

Saw Stenot

Elkanah Young,
Yard.

Cull

11320

11 1 3
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 11 92
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 11 95
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 11 97
 11 98
 11 99
 11 100

2748
2749
5294
X

177

Corn
Buck 2 topper 100

Cull

3
4
5
6
7
8 1 8
9 1 9
10 1 10
11 1 11
12
13 1 13
14
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16
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18 11 36
19 21
20 22
21 46
22 1 176
23 1 X
24 11
25

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15-

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Shuck
Barn

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2449

X

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43

||||| 92

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Total 3623

X

10

10

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10

	4/4 N2	4/6 Cam	4/6 Pull	5/8 8/4 N2	5/8 8/4 Cam	5/8 8/4 Pull
3						
4						
5						
6	1	6			6	12
7					28	21
8	48				48	8
9	72			8	9	10
10	100				70	24
11	110		39	30	22	26
12	96		220	55		42
13	91	24	390			15
14	14	270	486	120	144	16
15	30	420	525	221	234	34
16	48	490	472	70	126	18
17	18	531	531	465	300	20
18	19	603	480	256	320	22
19	20	570	165		102	268
20	72	440	252	68		459
21	367	408	65	72	342	Totals 727
22	1039	247	82	76	76	
23		224	30	40	60	
24		253	48	63	189	
25		48	18	66	154	
26		85	20	23	69	
27		72	21	192	168	
28		57	70	150	50	
29		80	4092	1975	2517	
30		21	3800	1482	2208	
31		22	Totals 7892	Totals 3457	Totals 4725	
32		46				
33		4918				
34		576				
35		775				
36		192				
37		186				
38		49				
39		5345				
40		3579				
41		Totals 8924				

July		Aug 20		By Glass		5/4	
4/4	1/2	5/4	6/4	5/4	6/4	5/4	6/4
3	1/2	10	10	5/4	6/4	5/4	6/4
4				5/4	6/4	5/4	6/4
5				5/4	6/4	5/4	6/4
6	11	12	72	5/4	6/4	5/4	6/4
7	11	14	14	5/4	6/4	5/4	6/4
8	1	8	8	5/4	6/4	5/4	6/4
9	111	27	27	5/4	6/4	5/4	6/4
10	111	60	10	5/4	6/4	5/4	6/4
11	111	66	11	5/4	6/4	5/4	6/4
12	111	48	72	5/4	6/4	5/4	6/4
13			130	5/4	6/4	5/4	6/4
14	11	28	84	5/4	6/4	5/4	6/4
15	1	15	270	5/4	6/4	5/4	6/4
16	1	16	144	5/4	6/4	5/4	6/4
17	1	17	136	5/4	6/4	5/4	6/4
18	11	20	90	5/4	6/4	5/4	6/4
19	111	367	152	5/4	6/4	5/4	6/4
20	1	11	40	5/4	6/4	5/4	6/4
21	11	110	42	5/4	6/4	5/4	6/4
22	111	92	128	5/4	6/4	5/4	6/4
23	111	48	153	5/4	6/4	5/4	6/4
24	11	26	36	5/4	6/4	5/4	6/4
25	1	1482	22	5/4	6/4	5/4	6/4
		1482	3579	5/4	6/4	5/4	6/4
			192	5/4	6/4	5/4	6/4
			150	5/4	6/4	5/4	6/4
			2208	5/4	6/4	5/4	6/4

Hinkle & Banner
Yard.

142

Com. John Glass Culls - Oak
June 15th - Sun 10.00
Nesson, Va.

3					
4		1	4	III.III.III.III.III.III-28-	102
5			25	III.III.III.III.III.III-125	90
6			111-46	III.III.III.III.III.III-18	
7			371	III.III.III.III.III.III-34	204
8	1-21 169	31	248	III.III.III.III.III.III-33	231
9	III.III.III.III			III.III.III.III.III.III-25	200
10	III.III.III.III	30	270	III.III.III.III.III.III-12	108
11	III.III.III.III	33-	330	III.III.III.III.III.III-18	180
12	III.III.III.III	29-	308	III.III.III.III.III.III-15-	165
13	III.III.III.III	13-	156	III.III.III.III.III.III-1-21	252
14	III.III.III.III			III.III.III.III.III.III-9	117
15	III.III.III.III			III.III.III.III.III.III-4	56
16	III.III.III.III			III.III.III.III.III.III-60	60
17	III.III.III.III			III.III.III.III.III.III-16	16
18	III.III.III.III			III.III.III.III.III.III-17	17
19	III.III.III.III			III.III.III.III.III.III-19	19
20	III.III.III.III			III.III.III.III.III.III-60	60
21	III.III.III.III			III.III.III.III.III.III-63	63
22	1012	1	22		1857
23	X		3033		
24					
25					

Handwritten signature

8	com	culls			
9	1	9	8-1 - 8	III.I - 48	3,033
10	III.I	60	9	22	1012
11	III.I	934	10	24	1857
12			11	3 24	590
			12-11		
			13		
			14		

12 Ozro Young & Son's Store
+ B - Gabell's Young
Yard 3

Lot. Sum \$10.00

1 + 2 Oak - 1.012 - 2000
 Corn " 3.033 1200
 Cuck " 1.857 700
5.902

See about 1 yd. Ozro Young
 3 " C. O. Young
 1 " Smith Stouts

3362
30258 5
 3

Page 57

Storton yd -

2246
12
 4492
2246
 26912

658
23 2
 1974 1
 1316
15.134

4.023
16
 24138
4023
 64.368

101220
20240

3.033
12
 6066
3033
 36.396

1.857
700
 12.9900

15.13
 6436
 30.25
 2695
1000
 146.69

20.24
 26.39
1299
 69.62
146.69
 216.39

4/11/19
 null John Cross

[illegible]

1 + 2

Corn

Culls

- 3
- 4
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- 22
- 23
- 24
- 25

1 + 2 Pop 658 - 23.00

Corn " 4023 16.00

Culls 3362 9.00

8.043 Pop

Sum 2.246 ft. 12.00

494

182 *Duffa Coy*

cure

Bynn & Buskey

3							189
4							264
5							560
6							690
7							396
8	11	16					896
9	1	9					711
10	11	20					630
11	11	33					473
12	11	60					336
13	11	65					325
14	11	14					252
15	11	195					90
16	11	48					812
17	11	17					4
18	11	108					44
19	11	19					70
20	11	63					156
21	11	88					119
22	11	29					112
23	11	779					135
24	11						120
25	11						154
26	11						132
27	11						78
28	11						112
29	11						75
30	11						48
31	11						1841
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99	11						
100	11						

Horton yard

can

cure

3365

6019

545

1573

1841

Horton, yard

142

Plant good Aug 21
Cull

8			
4			
5			
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40

72

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36

104

70

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112

17

90

38

63

66

773

616

1389

23

5167

2778

3194

8

75

234

329

304

270

360

165

240

169

126

165

160

34

90

133

189

88

72

25

3236

5118

8354

16

50124

8354

133654

21

68

160

318

553

392

234

170

44

48

39

56

48

19

2190

3267

5437

48933

8924
178
2464
65951908

July 27/02
Oull

[illegible]

182

Stout
Carr Stout
Stout

Cull

3					
4					|||||
5					|||||
6					|||||
7					|||||
8					|||||
9					|||||
10					|||||
11	||	22	|||||	5-	6
12	|||	72	|||||	72	64
13	|||	52	|||||	98	155
14	|||	70	|||||	280	186
15	|||	105	|||||	459	63
16	|||	48	|||||	450	416
17	|||	17	|||||	396	378
18	|||	54	|||||	396	440
19	|||	57	|||||	325	253
20	|||	22	|||||	504	348
21	|||	23	|||||	420	195
22	|||	24	|||||	368	196
23	|||	50	|||||	153	165
24	|||	616	|||||	270	192
25	|||		|||||	228	85
26	|||		|||||	80	18
27	|||		|||||	168	38
28	|||		|||||	110	20
29	|||		|||||	69	24
30	|||		|||||	192	25
31	|||		|||||	75	
32	|||		|||||	5118	3267
33	|||		|||||		
34	|||		|||||		
35	|||		|||||		

Stout
Yard.

Acct. of Poplar lumber by
grades received by R. C. Duff
as shown by his deposition
on pages 44 & 45, and the
per cent of each grade

Total of Poplar Lumber	1 & 2's and per cent	Cans + per cent	Ship Culls + per cent	Frame Yards C. V. Young or Dry Dock
117 636	23 870 20+%	55 684 47+%	38 082 32+%	
65 453	14 601 22+%	27 654 42+%	23 198 35%	Ogro Young
183 089	38 471 21+%	83 338 45+%	61 280 33+%	Totals

25000.
 20
 250000
 50000
 525000
 51
 26250
 3450
 825
 559.00

25000
 45
 15000
 100000
 115000
 345000

25000
 38
 75000
 25000
 82500

"
Calculations
"no 2"

With Johnson's Depts

A. & N. S. Johnson

in apt with

L. G. & J. P. Glass

1902

	lens	or	let
Jan. 27	By 90 day note (Stout & Young's)	✓	\$10 00
Feb. 20	" 90 " " (Lockhart yard)	✓	500 00
April 1	" 90 " " (Stout yard)	✓	200 00
May 22	" 90 " " (Stout yard)	✓	550 00
June 1	" 90 " " (Stout ")	✓	125 00
June 13	" 90 " " (Stout P. V. Young)	✓	450 00
July 14	" 90 " " (C. V. Young)	✓	700 00
July 27	" 90 " " (Edwards yard)	✓	400 00
Nov. 4	" Check on Lockhart yd	✓	180 92
	" Interest \$5.77 & 1.40	✓	7 25
1903			
Mar 7	" Check on C. V. Young	✓	580 00
" 23	" Interest on Stout yd-	✓	14 34
" 23	" Shred	✓	4 50
" 23	" Check on Stout yd-	✓	141 80
June 13	" " " " "	✓	216 81
Mar. 7	" 90 day note on C. V. Young	✓	734 40

1902 (1) Stout yard.

July 27	Bo 6209 ft. 1+2 Poplar #23	142 81	✓
"	18786 " Cone. " #16	300 58	✓
"	13201 " Cull " #9	118 84	✓
Aug. 23	" 1355 " 1+2 " #23	31 17	✓
"	5496 " Cone. " 16	87 94	✓
"	3364 " Cull " 9	30 28	✓
214	" 1389 " 1+2 " 23	31 94	✓
"	8354 " Cone. " 16	133 66	✓
"	5437 " Cull " 9	48 33	✓
"	63591 "	\$925 59	2
Mar 7	" Discount	14 40	✓
	Totals over	\$939 99	5214 52

Aunts brot over

						939	99	5214	52
1902	2. Lockhart yard								
Aug. 19	Do	1930	ft.	1 + 2 Poplar	23	44	39	✓	
✓	"	11803	"	Corn.	16	188	03	✓	
✓	"	7779	"	Corn	9	70	01	✓	
✓	"	3995	"	Sym & Buckey	1200	47	94	✓	
Oct. 8	✓	1654	"	1 + 2 Oak	20	33	08	✓	
✓	"	2905	"	Corn	12	34	86	✓	
✓	"	3548	"	Corn	7	25	05	✓	
13.744	✓	938	"	1 + 2 Poplar	23	21	57	✓	
✓	"	5773	"	Corn	16	92	37	✓	
✓	"	4163	"	Corn	9	37	46	✓	
✓	"	15701	"	Sym & Buckey	12	188	41	✓	
	"	60219	"	Dis Count		500		✓	
						788	17		

1903 3. Statae Yd.

Mar. 23	Do	1491	ft.	1 + 2 Pop.	23	34	29	✓	
✓	"	11029	"	Corn.	16	176	46	✓	
✓	"	5748	"	Corn	9	51	73	✓	
✓	"	13652	"	Sym	12	163	82	✓	
✓	"	715	"	1 + 2 Oak	20	14	30	✓	
✓	"	1994	"	Corn.	12	23	92	✓	
✓	"	1554	"	Corn	7	10	87	✓	
✓	"			1 Load Lumber		7	00	✓	
✓	"			Interest		3	25	✓	
June 13	✓	1012	ft.	1 + 2 Oak	20	20	24	✓	
✓	"	3033	"	Corn	12	36	39	✓	
✓	"	1857	"	Corn	7	12	99	✓	
✓	"	658	"	1 + 2 Poplar	23	15	13	✓	
✓	"	4022	"	Corn	16	64	36	✓	
✓	"	3362	"	Corn	9	30	25	✓	
✓	"	2246	"	Sym	12	26	95	✓	
✓				Sym Lumber		10	00	✓	
		52374				701	95		

3

Ants brot over

1902	4. C. V. Young Yard							
July 2	90	1936	ft 152	Pop-	23	44	53	
"	"	4100	"	Came "	16	65	60	
"	"	3054	"	Cull "	9	27	48	
July 27	"	5580	"	152 "	23	128	34	
28	"	17345	"	Came "	16	277	52	
29-30	"	10504	"	Cull "	9	94	54	
Aug 17	"	3052	"	152 "	23	70	15	
18	"	7630	"	Came "	16	122	68	
"	"	5212	"	Cull "	9 ⁰⁰	46	91	
		58413				877	75	

5th Edwards yard

As given by Pliffs.

1903								
Nov	90	734	ft. 152	Pop	23	16	88	
24	"	11721	"	Cams. "	16	190	54	
	"	16288	"	Cull "	9	146	60	
	"	9	"	Chestnut 152	20		18	
	"	263	"	"	Cams	12	3	16
	"	452	"	"	Culls	7	3	10
	"	41	"	152 oak	20		82	
	"	412	"	Came "	12	4	94	
	"	265	"	Cull "	7	1	81	
		30185				368	03	3675 89
		Bal - due Johnsons as per their account						1538 63
		By exhibit "D"				210	98	
		" Difference in grade				381	41	595 39
		Bal. Conceded by drafts due Johnsons						943 24

A. & M. F. Johnson

to } account

L. G. & J. P. Glass

"A"

A & N. L. Johnson
In apt with
L. G. Glass

1901

Lens				
Jan	By Bal. on watch	✓	8	75
	" Cash	✓	25	00
2-5	" 1 pr Glass ¹⁵ - Shaws ⁵⁰	✓	1	25
4-9	" Check	✓	90	69
4-9	" Iron	✓		10
1902				
1-8	" 1 Chain	✓	1	65
1-24	" 1 Bango ^{4.75} , Whip ^{4.50} , Clock ^{7.50}	✓	5	95
7-26	" Check on Stinkert & Bauer	✓	300	00
8-2	" 25 lbs. Bacon @ 15	✓	3	75
8-21	" Check	✓	150	00
12	" 2 bags salt	✓	1	80
10-9	" 1 clock	✓		90
Nov.	" 1 Moulding ^{1.89} , 2010 ft. No. 1 C. siding @ 12 ^{24.12}	✓	26	01
	" 1205 ft. 3/8 culling ^{9.50}		11	45
	" 1992 " 1/2 No. 2 C. culling ^{9.50}		18	92
	" 550 " 3/8 No. 2 C. " ^{7.50}		4	12
12-9	" 3 bags salt	✓	2	70
18	" By Check on St. F. B. yd.	✓	150	00
18	" 1 Saw ^{2.10} 1 Whip ^{7.50}	✓	3	25
1903				
4-7	" 1 Trunk ^{4.75} - Shaws ^{1.40} , Sauter ⁹⁰	✓	7	05
6-9	" Sewing machine needles	✓		05

1902 Drs.

8-21	To 1039 ft 4/4-1 + 2 Poplar	25	25	97	✓
	" 8924 " 4/4 Corn. "	17	157	71	✓
	" 7892 " 4/4 Cull "	9	71	03	✓
	" 3457 " 5/4 5/4-152 "	27	93	34	✓
	" 4725 " " Corn "	18	85	05	✓
	" 127 " " Cull "	10	7	27	✓
Over	26764		434	37	81379

1903		26764	Amts. brot over		434	27	81	✓	79
1-17	50	382	ft 1st Poplar	25	9	45	✓		
"	"	5194	" Cane "	17	88	30	✓		
"	"	6748	" Cull "	9	60	73	✓		
3-26	"	156	" 1st Oak	22	3	43	✓		
"	"	647	" Cane "	13	8	41	✓		
"	"	<u>2711</u>	" Cull "	8	21	68	✓		
1901	"								
4-9	"	Damming	38 5-65 ft timber @ 3'	✓	115	69	742	06	
		Base due Johnsons					\$70	73	

A + M. L. Johnson

To

apx

L. G. Glass

"B"

A + N. S. Johnson

Inc ap^s with

L. G. & H. E. Glass

1902

10-10	By	Check on Elk. Young yard	✓	400	00
Dec-18	"	" " " " " "	✓	150	00
1903 1-10	"	1 Wagon by L. G. G.	✓	57	00
"	"	1 " " H. E. G.	✓	47	00
"	"	90 day note on Elk. Young yard	✓	306	00
15-	"	Stay by L. G. \$4.80 - Stay by H. E. \$1.59	✓	6	39
"	"	1 String bolt	✓		25-
17	"	Order to Barker & Brown ^{2.10} ; Coats 5.75	✓	8	25-
18	"	Stay by L. G. 2.67; Stay by H. E. G. 1.74	✓	4	41
July 21	"	90 day note	✓	510	00
28	"	Saw. 3.15, fuel 15	✓	3	30
8-4	"	600 ft Cone. Ceiling	✓	6	00
Nov-11	"	1 Belt 40 ft - (2)		6	00
4-15	"	90 day note	✓	275	
6-24	"	Stay - 5.35; 8-3. - Hump by, Debra 65	✓	6	
-24	"	Stay; 1.87 - 8.24 - Gunning Saw. 20	✓	2	

1903

5-29	50	4307 ft 152 Poplar	28	120	59	✓
"	10	470 " Cone. "	19	198	93	✓
"	16	612 " Cull "	10	166	12	✓
June-10	"	862 " 152 "	28	24	13	✓
"	"	2572 " Cone. "	19	48	86	✓
"	"	4271 " Cull "	10	42	71	✓
July 1	"	4128 " 152 "	28	115	58	✓
"	"	8903 " Cone. "	19	169	15	✓
"	"	6802 " Cull "	10	68	02	✓
28	"	9006 " 152 "	28	252	16	✓
"	"	9625 " Cone. "	19	372	87	✓
"	"	11854 " Cull "	10	118	54	✓
"	"	Less Cornets 6 ⁰⁰ + \$10 ⁰⁰		16	00	
99412				1713	66	
Bal. due Johnson				74	01	

A + N. L. Johnson

So } a 1/4

L. B. + H. E. Glass

" " ⁵¹
le

Recapitulation

L. G. + J. P. Glass due Johnsons	1538	42
L. G. Glass " "	70	73
L. G. + H. E. Glass " "	74	01
J. P. Glass " "	6	25
Totals due Johnsons	\$1689	73

Disputed Credits & Debits

\$10 ⁰⁰ Discount on \$510 ⁰⁰ dated 7-21-02	10	00
For Handling Lumber	9	72
On Belt, Pulley Shaft &c	20	95
Difference on Siding & Curbing	8	00
Not Credited with the following from		
C. & Young yard 3036 - 1 + 2 Pop 23	69	83
4510 - Cam " 16	72	20
2696 - Cull " 9	24	27
Totals of above disputed	\$213	98
Difference in grading	469	67
	883	65

A. & W. L. Johnson

Recapitulation
no. 1 Matter in dispute

R. G. & J. P. Glass

"L"

Statement Showing Errors
in the Account of lumber
delivered to and received by
A + N. L. Johnson: \$23⁰⁰ for 1 + 2¹⁸
\$16⁰⁰ for Cours. + \$9⁰⁰ for Culls
C. V. Young yard

Ans. Given on Bluffs Books | Lbs. Should be given for.

Quantity	Kind	Amount	Quantity	Kind	Amount	Differences	
						Am't	Quantity
7532	1 + 2	173 23	10568	1 + 2	242 06	69 83	3036
24565	Cours	392 00	29075	Cours	465 20	72 20	4510
16074	Culls	144 66	18770	Culls	168 93	24 27	2696
48171		\$710 89	58413		\$877 19	166 30	10242

"A"

208 172
6
27

Poplar

Amount of Sumner by grades
with which the plaintiffs have
given drafts credit, and the
percent of each grade

Total of Poplar	Amt. of 1+2s + percent	Amt. of Coins + percent	Amt. of Ship Cruises + percent	
63 591	8953 .14+	32636 .51+	22002 .34+	Stout
32 386	2868 .09-	17576 .54+	11942 .37-	Lockhart
26 281	2119 .085	15052 .57-	9110 .34+	Skorton
48 169	7532 .157	24563 .50+	16074 .34+	C. V. Young
28 743	734 .02+	11721 .40+	16288 .57+	Edwards
39 088	4878 .12+	18843 .48+	15367 .39+	St. Banner
99 412	18305 .18+	41570 .39+	39539 .39%	Elk. Young
337 670	45387 .13+	161961 .48+	130322 .39+	Totals

14 48 38

See A. Johnson's depositions
in Chas. A. Rogers, 4, 5 + 6

"Calculations
"no 1"

W. H. Johnson's Depo'

\$2300 \$1600 \$900
 Aug 18/03

182

corn

culls

5				1	5
6					
7	1		7	1	7
8				1	8
9				111	27
10	1		10		
11	111		33	1	11
12 1 12	111		36	1	12
13	11		26		42
14	1		14	111	15
15				1	16
16				1	148
17					9

1287

18 1 18 1
 19 30 ✓
 20 23
 21 90
 22 60
 23 690
 24 2304

Inspected
 by Joe Lanson

128
 230
 69
 127

30
 144
 140

 317

^m
 122 / 23859 ft over of about -
 119206
^m

Total \$162310 Two last taking
 up
 "F" with S. G. G's dep

192 23⁰⁰

July 2 L. J. G. 1900
Com 1.20

9⁰⁰

Crull

3				|||||	39
4				|||||	108
5		|||||	40	|||||	140
6		|||||	186	|||||	210
7		|||||	196	|||||	252
8		|||||	272	|||||	288
9	|||||	36	|||||	306	306
10	|||||	50	|||||	400	260
11	||	22	|||||	286	242
12	|||||	72	|||||	300	288
13	|||||	130	|||||	312	273
14	|||||	210	|||||	252	210
15	|||||	300	|||||	270	165
16	|||||	224	|||||	240	80
17	|||||	85	|||||	204	68
18	|||||	72	|||||	198	
19	|||||	152	|||||	228	57
20			|||||	160	21
21	|||||	169	|||||	84	22
22	||	66	|||||	66	25
23	|	23	|||||	23	30514
24	|||||	120	|||||	72	27486
25	|||||	1936	|||||	4100	

35281
13862
49147

Com

4100
16
24600
4100
6560
4558
2748
13866

"G"

1985 122
4100 com

3054 eulls

→ 9090 1384200 15257
9090
47760
45450
281000
18020

$$\begin{array}{r}
 2972 \\
 22 \\
 \hline
 23772 \\
 5954 \\
 \hline
 83316
 \end{array}$$

$$\begin{array}{r}
 2972 \\
 6944 \\
 5549 \\
 \hline
 154651
 \end{array}$$

$$\begin{array}{r}
 8301 \\
 10293 \\
 5549 \\
 \hline
 27173
 \end{array}$$

$$\begin{array}{r}
 6944 \\
 19 \\
 \hline
 62496 \\
 6944 \\
 \hline
 132936
 \end{array}$$

1922 W.E.H.

Dom. July 1/03

Cull

3			III	9
4			III	20
5		III	III	50
6		III	III	96
7		III	III	166
8	II	16	III	184
9	I	9	III	171
10	III	30	III	40
11	III	55	III	110
12	III	48	III	60
13	III	117	III	112
14	III	126	III	4
15	III	150	III	45
16	III	48	III	48
17	II	34	III	17
18	III	72	III	18
19	I	19	III	1230
20	III	80	I	10
21	III	84	III	1230
22	II	44	III	3826
23		72		3281
24	III	125		8337
25	III	1129		
26		28		
27		9032		
		2378		
		3281		

1230
10
1230
3826
3281
8337

24
2014
18126
2014
38266

Glass Lilies.
June 30th &
July 11 1903.
with L. G. Glass,
Depo.

1129

2014

1230

4373 ✓

Pennington Bros.

ATTORNEYS AT LAW,

JONESVILLE AND PENNINGTON GARVA.

Defendants tally of the
C. V. Young yard
with
their calculations

$$\begin{array}{r} 21 \\ 46 \\ \hline 7 \end{array}$$

$$\begin{array}{r} 25000 \\ 21 \\ \hline \end{array}$$

$$\begin{array}{r} 25000 \\ 50000 \\ \hline \end{array}$$

$$\begin{array}{r} 50000 \\ 525000 \\ \hline \end{array}$$

$$\begin{array}{r} 525000 \\ 5 \\ \hline \end{array}$$

$$\begin{array}{r} 26.250 \\ \hline \end{array}$$

$$\begin{array}{r} 25000 \\ 46 \\ \hline \end{array}$$

PENNINGTON LUMBER CO.
Rough and Dressed Yellow Poplar Lumber,
CUMBERLAND RIVER STOCK,
PENNINGTON GAP, " " " " VA.



Louisville Bk. Co., Louisville, Ky.

Jonesville, Va. *May 4* 1902 No. **2506**

Howell's Valley Bank

\$280.92

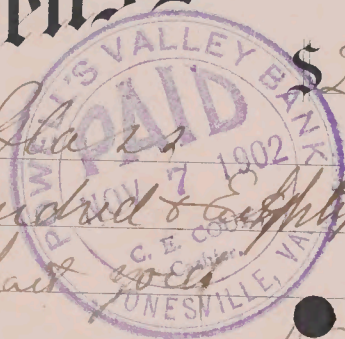
L. C. Glass

Two Hundred & Eighty & 92/100

Dollars

For

Lockhart



N. L. Johnson

L. G. Glass

J. P. Glass

PENNINGTON LUMBER CO.
Rough and Dressed Yellow Poplar Lumber,
CUMBERLAND RIVER STOCK,
PENNINGTON GAP, = = = VA.



Louise H. Co. Louisville, Ky

Jonesville, Va.

July 26 1902 No. 2339

Howell's Valley Bank

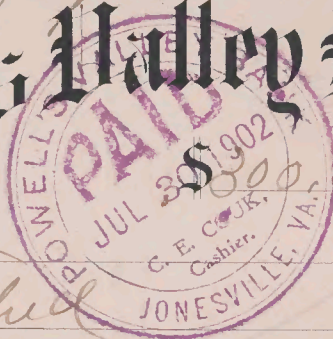
L. G. Glass

Three Hundred

Dollars

For cash on Hand & Allocated & Balance

H. Johnson



L. G. Glass

1876

PENNINGTON LUMBER CO.
Rough and Dressed Yellow Poplar Lumber,
CUMBERLAND RIVER STOCK,
PENNINGTON GAP, - - - - VA.



Louisville 17th St., Louisville, Ky.

Jonesville, Va. *Meck 7* 1903 No. **2760**

Howell's Valley Bank

L. G. Glass

\$ *580.00*

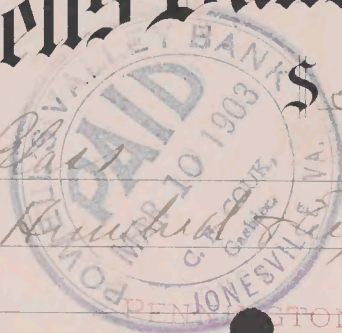
Five Hundred Eighty

Dollars

For

PENNINGTON LUMBER CO.

PER *A. Johnson* SECY



L. H. Glass

L. H. & W. C. Glass

PENNINGTON LUMBER CO.
Rough and Dressed Yellow Poplar Lumber,
CUMBERLAND RIVER STOCK,
PENNINGTON GAP, - - - VA.



Lumber Co. Louisville, Ky

Jonesville, Va.

Dec 18

1902

No.

2590

Howell's Valley Bank

L. G. & Co.

Adv. H. H. H. H. H.

For

advance of \$500.00



Dollars

W. L. Johnson

L. M. W. E. Glass

PENNINGTON LUMBER CO.
Rough and Dressed Yellow Poplar Lumber,
CUMBERLAND RIVER STOCK,
PENNINGTON GAP, - - - VA.



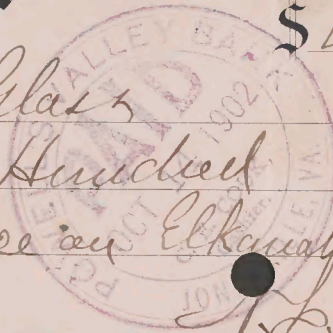
Louisville Lith. Co., Louisville, Ky.

Jonestville, Va. Oct 10 1902 No. 2466

Howell's Valley Bank

\$ 400.00

L. G. Glass
Four Hundred Dollars
For Advance on Elk Knob Lumber
T. L. Johnson



L. G. Glass

PENNINGTON LUMBER CO.
Rough and Dressed Yellow Poplar Lumber,
CUMBERLAND RIVER STOCK,
PENNINGTON GAP, " " " " VA.



Lowmiller 174 Co., Louisville, Ky

Jonesville, Va. *Jun 18* 1903 No. 2975

Howell's Valley Bank

\$216.31

J P Glass

Two hundred & sixteen 31 Dollars

For

PENNINGTON LUMBER CO.

PER *A Johnson*

J. P. Sears

PENNINGTON LUMBER CO.
Rough and Dressed Yellow Poplar Lumber,
CUMBERLAND RIVER STOCK,
PENNINGTON GAP, - - - VA.



Lowell Lumber Co. Louisville, Ky.

Jonesville, Va. *Mar 23* 1903 No. **2798**

Howell's Valley Bank

\$141,80

J P Glass

One Hundred & Forty one & ⁸⁰/₁₀₀ Dollars

For

PENNINGTON LUMBER CO.

A Johnson

PER

SECY.

J. P. Glass

PENNINGTON LUMBER CO.
Rough and Dressed Yellow Poplar Lumber,
CUMBERLAND RIVER STOCK,
PENNINGTON GAP, - - - VA.



Jonesville, Va. *Dec 18* 190*2* No. **2589**

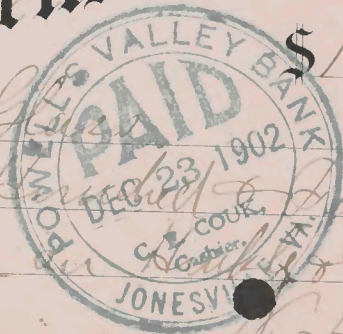
Howell's Halley Bank

L G G \$ *150.00*

Alce B. Howell *Dec 23 1902*

Dollars

For *advance on* *Beamer yard*
A L Johnson



L. H. Glady

PENNINGTON LUMBER CO.
Rough and Dressed Yellow Poplar Lumber,
CUMBERLAND RIVER STOCK,
PENNINGTON GAP, - - - VA.



Unionville (Pa.) Co. Inc. Copyright, Ky

Jonesville, Va. Aug 20 1902 No. 2372

Howell's Valley Bank

L. G. Glass

\$150.00

All Hundred & Fifty
For advance on Bank Note

Dollars

A. L. Johnson



L. N. Glass

Powell's Valley Bank

Jonesville, Va.

\$ 276.00 ⁰² /

JONESVILLE, VA.,

April 15

1903

Society
L G Glass

days after date one

promise to pay to the order of

Two Hundred & Seventy Dollars

Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and me waive the benefit of an homestead exemption as to the debt evidenced by this note.

Given under an hands the date above written.

The undersigned principals, and endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without effecting their liability, and agree that if suit is brought hereon to pay ten per cent. attorney's fee, which shall be added to and become a part of the judgment.

PENNINGTON LUMBER CO.

PER A. Johnson SECY

Due

July 16 1903

Rowell's Valley Bank
Jonesville, Va.

We, as endorsers of this note, waive demand,
notice, protest, all exemption laws, and guarantee
payment of same, and acknowledge that we sign
with a full understanding of this endorsement.

L. G. Glass
L. G. F. W. Glass

POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 734.40

Jonesville, Va., Me 7, 1903

Ninety
B. G. Glass

days after date me promise to pay to the order of

Seven Hundred & thirty 40

Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and we waive the benefit of our homestead exemptions as to the debt evidenced by this note.

Given under our hand in the date above written.

The undersigned principals, and the endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without effecting their liability, and agree that if suit is brought hereon to pay ten per cent attorney's fee, which shall be added to and become a part of the judgment.

PENNINGTON LUMBER CO.

PER

A. J. J. J.

SECY.

Due June, 1903

L. G. Mass
L. G. W. E. Mass

We, as endorsers of this note, waive demand,
notice, protest, all exemption laws, and guarantee
payment of same, and acknowledge that we sign with
a full understanding of this endorsement.

POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 450.00

Jonesville, Va., June 13⁸⁰⁰, 1902

Fifty days after date we promise to pay to the order of
E. G. & J. P. Glass
Four Hundred & Fifty Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and
we waive the benefit of our homestead exemptions as to the debt evidenced by this note.

Given under our hand on the date above written.

The undersigned principals, and the endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without effecting their liability, and agree that if suit is brought hereon to pay ten per cent attorney's fee, which shall be added to and become a part of the judgment.

A. Johnson
A. L. Johnson

Due Sept 11 1902

POWELL'S VALLEY BANK

We, as endorsers of this note, waive demand, notice, protest, all exemption laws, and guarantee payment of same, and acknowledge that we sign with a full understanding of this endorsement.

L. G. P. Jones

2061

POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 530.00

348

Jonesville, Va., May 23, 1902

Triety days after date we promise to pay to the order of J P & G. Glass Five Hundred & Fifty Dollars.

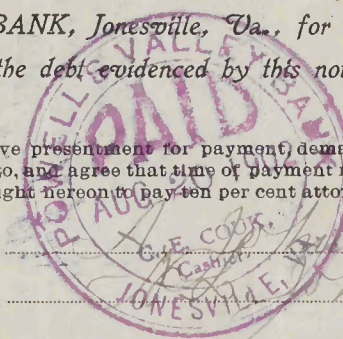
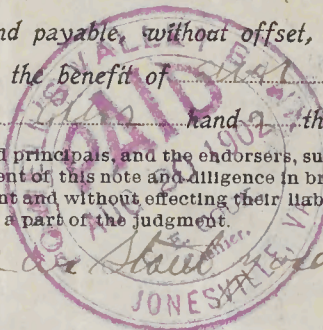
Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and we waive the benefit of homestead exemptions as to the debt evidenced by this note.

Given under hand the date above written.

The undersigned principals, and the endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without effecting their liability, and agree that if suit is brought hereon to pay ten per cent attorney's fee, which shall be added to and become a part of the judgment.

Acheance & David

Due Aug 27, 1902



We, as endorsers of this note, waive demand, notice, protest, all exemption laws, and guarantee payment of same, and acknowledge that we sign with a full understanding of this endorsement.

Pro L. E. Green -

21/22/902

*To NATIONAL EXCHANGE BANK,
Pay ~~any bank or banker,~~
LYNCHBURG, VA.
POWELL'S VALLEY BANK,
JONESVILLE, VA.*

PAY TO THE ORDER OF
Powell's Valley Bank,
Jonesville, Va.
NAT'L EXCHANGE BANK,
LYNCHBURG, VA.
JAMES T. BOWMAN, Cash'r.

21 Aug

JUL 17 1902

POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 700.00

Jonesville, Va.,

July 14

, 1902

days after date

we promise to pay to the order of

Wm. P. & L. G. Glass
Seven Hundred

Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and

we waive the benefit of our homestead exemptions as to the debt evidenced by this note.

Given under our hand, the date above written.

The undersigned principals, and the endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note, and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without affecting their liability, and agree that if suit is brought hereon to pay ten per cent attorney's fee, which shall be added to and become a part of the judgment.

A. Johnson
W. E. Johnson

Due

Oct 13, 1902

POWELL'S VALLEY BANK

We, as endorsers of this note, waive demand, notice, protest, all exemption laws, and guarantee payment of same, and acknowledge that we sign with a full understanding of this endorsement.

J. P. L. G. G. G.
JUL 22 1902

POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 310.00

Jonesville, Va.,

July 1st

1902

days after date

we promise to pay to the order of

Surety
L. P. Glass

Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and we waive the benefit of homestead exemptions as to the debt evidenced by this note.

Given under our hand and seal the date above written.

The undersigned principals, and the endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without effecting their liability, and agree that if suit is brought thereon to pay ten per cent attorney's fee, which shall be added to and become a part of the judgment.

Adrian J. Smith as surety Cashman

A. Johnson
A. L. Johnson

Due

May 2

1902

NOV 11 1890

We, as endorsers of this note, waive demand, notice, protest, all exemption laws, and guarantee payment of same, and acknowledge that we sign with a full understanding of this endorsement.

L. G. P. Glass



POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 200.00

Jonesville, Va.,

April 2, 1902

days after date

we

promise to pay to the order of

Property
L. Ed. J. Glass
and Hunched

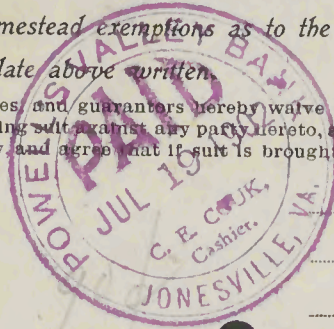
Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and

we waive the benefit of an homestead exemptions as to the debt evidenced by this note.

Given under our hand on the date above written.

The undersigned principals, and the endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without effecting their liability, and agree that if suit is brought hereon to pay ten per cent attorney's fee, which shall be added to and become a part of the judgment.



A. J. Mason
A. J. Mason

Due July, 1902

We, as endorsers of this note, waive demand,
notice, protest, all exemption laws, and guarantee
payment of same, and acknowledge that we sign with
a full understanding of this endorsement.

S. H. & J. P. Mass

POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 570.00

Jonesville, Va.,

July 21, 1903

113 days after date

we promise to pay to the order of

L. B. & H. E. Glass

Five hundred & ten

Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and we waive the benefit of our homestead exemptions as to the debt evidenced by this note.

Given under our hands the date above written.

The undersigned principal, and the endorers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without effecting their liability, and agree that if suit is brought hereon to pay ten per cent attorney's fee, which shall be added to and become a part of the judgment.

Due Oct 21, 1903

PENNINGTON LUMBER CO

PENNINGTON GAP, VA.

POWELL & KATLEY BANK

We, as endorsers of this note, waive demand, notice, protest, all exemption laws, and guarantee payment of same, and acknowledge that we sign with a full understanding of this endorsement.

Edw. E. Mease

Pay to the order of

Five hundred and no/100 Dollars

Five

Five hundred and no/100 Dollars

Five hundred and no/100 Dollars

500.00

POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 125.00

Jonesville, Va., June 2nd, 1902

days after date we promise to pay to the order of

Society of G. & J. P. Glass

One Hundred Twenty Five

Dollars.

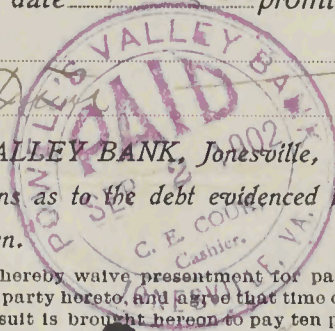
Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and we waive the benefit of our homestead exemptions as to the debt evidenced by this note.

Given under our hand the date above written.

The undersigned principals, and the endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without affecting their liability, and agree that if suit is brought hereon to pay ten per cent attorney's fee, which shall be added to and become a part of the payment.

Advance on Harton yard

Date Sept 1, 1902



A. Johnson
A. Johnson

POWELL'S VALLEY BANK

We, as endorsers of this note, waive demand, notice, protest, all exemption laws, and guarantee payment of same, and acknowledge that we sign with a full understanding of this endorsement.

S. G. & J. P. Glass

Powell's Valley Bank

Jonesville, Va.

\$ 306.00

JONESVILLE, VA.,

June 11 1903

days after date

me promise to pay to the order of

Surety
L. G. & W. E. Glass

Three Hundred & Six

Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received,
and me waive the benefit of an homestead exemption as to the debt evidenced by this note.

Given under an hand 2 the date above written.

The undersigned principals, and endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without effecting their liability, and agree that if suit is brought hereon to pay ten per cent. attorney's fee, which shall be added to and become a part of the judgment.

PENNINGTON LUMBER CO.

PER A. Johnson SECRET

Due

Sept 9

1903

L. G. F. W. E. Gass

We, as endorsers of this note, waive demand,
notice, protest, all exemption laws, and guarantee
payment of same, and acknowledge that we sign
with a full understanding of this endorsement.

POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 400.00 ^{400⁰⁰}

Jonesville, Va.,

Aug 19, 1902

days after date nl

promise to pay to the order of

Myrtle
P. & L. G. Glass
Dan Hinchel

Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and

nl waive the benefit of any homestead exemptions as to the debt evidenced by this note.

Given under an hand 2 the date above written.

The undersigned principals, and the endorsers, sureties, and guarantors hereby waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without affecting their liability, and agree that if suit is brought hereon to pay ten per cent attorney's fee, which shall be added to and become a part of the payment.

Schumaker and Edwards Bond

A. Johnson
A. Johnson

Due

Nov 1, 1902

We, as endorsers of this note, waive demand,
notice, protest, all exemption laws, and guarantee
payment of same, and acknowledge that we sign with
a full understanding of this endorsement.

J. P. & S. G. Glens



POWELL'S VALLEY BANK,

JONESVILLE, VIRGINIA.

\$ 60.00

Jonesville, Va., Dec 21, 1902

30 days after date me promise to pay to the order of

Surety
E. G. & J. P. Glass
John Hinchel

Dollars.

Negotiable and payable, without offset, at POWELL'S VALLEY BANK, Jonesville, Va., for value received, and

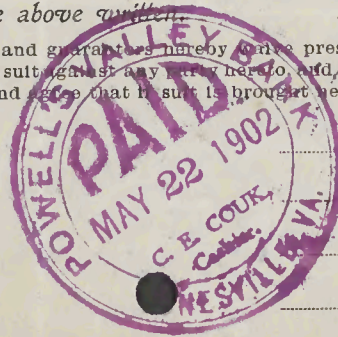
me waive the benefit of an homestead exemptions as to the debt evidenced by this note.

Given under an hand, the date above written.

The undersigned principals, and the endorsers, sureties, and guarantors hereby give presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or other consent and without effecting their liability, and agree that if suit is brought hereon to pay ten per cent attorney's fee, which shall be added to and become a part of the judgment.

clearance & bookhoof yard

Due May 22, 1902



A. Johnson
J. B. Johnson

We, as endorsers of this note, waive demand,
notice, protest, all exemption laws, and guarantee
payment of same, and acknowledge that we sign with
a full understanding of this endorsement.

S. G. & J. P. Glass

J. P. Glass



Ledger

1902

debits.

To Check on Lockhart yard, J.P. Glass	280.92
" interest on	7.25
" Bell, pulley, shaft, etc	26.95
" Bill mauling, siding etc	32.04
93 ft ceiling @ 10	9.30
270 " " "	2.70
1972 ft " " "	17.92
550 ft 3/4 inch @ 8	4.40
Dec 9 3 bags salt	2.70
Dec 16. Check on H+B, y	150.00
" 15 Saw 250 whif 70¢	3.25
1703 Check on C.S. Young yard	580.00
" interest on Miller yard	14.34
" Share	4.50
" Ch on Norton yard out	141.80
Jan 13 To Check	216.31

1496.43

895.24

601.19

Bal

1496.43

150.00

1346.43

No 11. 7 57.

1902

credits

Nov. 11. By int. on Lockhart yard	5.00
Number, Hunkle & B	9.45
1903	
Jan. 17 By 378 ft 1 1/2 prof. @ 25¢	98.30
" 17 " 3794 ft Corn @ 17¢	60.73
" 17 " 6749 ft Culls @ 9¢	163.48
Norton yard	
Mar. 23. By 1496 ft 1 1/2. 110 23	34.29
" " 11029 ft Corn " @ 16¢	176.46
" 23 " 5748 ft Culls " @ 9¢	51.73
" 23. 13652 ft Linn + B @ 12¢	163.82
" 915 ft oak 1 1/2 @ 20¢	183.00
" 1974 ft " Corn @ 12¢	23.92
" 1554 ft " Culls @ 7¢	10.87
By 156 ft 1 1/2 oak @ 20¢	3.12
647 ft Corn " @ 12¢	7.76
2711 ft Culls " @ 17¢	18.97
March 26 Hunkle & Bannum	495.64
	298.3

June 13

Norton yard

By 1012 ft 1 1/2 oak @ 20¢	20.24
3033 ft Corn " @ 12¢	36.39
" 1957 ft Culls " @ 7¢	12.99
" 654 ft 1 1/2 " @ 23¢	15.13
" 4023 ft " Corn @ 16¢	64.34
3562 ft " Culls @ 9¢	30.25
" 2246 ft " Linn @ 12¢	26.95
For Green Gumbo	10.00

216.29

495.64

701.93

H+B

{ 163.48 }

{ 27.83 }

895.24

701.93

193.31

See

SHEET No.

Kindly fill in spaces below the names of your customers and their addresses. We will write each one a letter advising them that Washburn Crosby Co.'s **GOLD MEDAL** Flour can be bought at your store. This will be a good advertisement for you, cost you nothing and increase your trade.

Name of Grocer

Gedger 10 1 233

Address

Leredito.

115.67
1710.26
1825.93

1901	NAME OF CUSTOMER	
	Bul due #875 + 1.25 =	10.00
1902	Jan. To Chain 16.5. Jan 10 =	1.75-
	" 24. Bargo, 435. 45. 75. Clock =	5.95-
	" 27. Note 90 da, Stout + Young yards	310.00
Feb 20	" 90 da. Lockhart "	500.00
April 1	" 90 da. Horton "	200.00
May 22	" 90 da. Stout "	550.00
Jun 1	" 90 da. Horton "	120.00
June 13	" 90 da. Stout - R. D. Y "	450.00
July 14	" 90 da. L. V. Young "	700.00
" 26	" 90 " Hinkle + Banner	350.00
" 27	Grading, 1 Handling, 2	5.73
Aug 2	85# Bacon	3.75-
" 19	Note 90 da. Edwards yard	400.00
" "	Panc	4.40
" 21	Chuck Banner	150.00
" 27	2 Bargo Bull-	1.80
Oct 9	Clock	.90
	<u>\$ 3719.28</u>	
	<u>2143.03</u>	
	<u>\$ 1576.25-</u>	

1902	ADDRESS	
July 17.	By 6209 ft. 1+2 Pof. @23, Stout-y.	142.81
" "	" 18796 " Com " @16 "	300.54
" "	" 13201 " Cull @ 9 "	118.81
Aug 19.	" 1830 ft. 1+2 Pof. @23, Lockhart	44.39
" "	" 11803 ft Com " @ 11 "	189.03
" "	" 7779 Cull @ 9 "	70.01
" "	" 3995- Lym + B. @ 12 "	47.54
Aug 21,	1355 ft 1+2 @ 23, Stout-yard	31.17
" 21	5496 " Com @ 16 "	87.94
" 21	3364 ft Cull @ 9 "	30.28
" 21	1389 ft 1+2 @ 23 "	31.94
" 21	8354 ft Com @ 16 "	133.66
" 24	5437 ft Cull @ 9	48.33
Aug 21	Hinkle + Banner	1275.99
	By 1039 ft 1/2, 1+2 @ 25	25.97
" "	" 8924 ft 1/2 Com @ 17	151.71
" "	" 7892 ft 1/4 Cull @ 9.	71.03
" "	3457 ft 5/8 + 1/4, 1+2 @ 27	93.34
" "	4725 ft 5/4 + 1/4 Com @ 18	85.05
" "	727 ft Cull @ 10	7.27
2704 ft		434.37
		1275.99
		1710.26
Oct 8.	1654 ft 1+2 Oak @ 20	33.08
" "	2905 ft Com " @ 12	34.86
" "	3578 ft Cull " @ 7.	25.02
" "	938 ft 1+2 Pof @ 23	21.57
" "	5773 ft Com " @ 16	92.37
" "	4163 ft Cull Pof @ 9	37.46
" "	15701 Lym + B. @ 12	188.41
		432.77
		1710.26
		\$ 2143.03

Kindly fill in answer before the next of business. We will write each one a letter and
show them that they are not alone. This will be a good
advertisement for your next year's business.

Name of Customer

NAME OF CUSTOMER

ADDRESS

Everyone Please Write

202
150
50
20

Notes And Checks.

Know all Men by these Presents, That we,

R. L. Pennington

are held and firmly bound unto the Commonwealth of Virginia, in the sum of *\$100.00*

..... Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemption as to this obligation, and any claim or right to discharge any liability to the Commonwealth arising under this bond or by virtue of said office, post or trust, with coupons detached from the bonds of this State. Sealed with our seals, and dated this *5th* day of

June....., one thousand nine hundred *five*

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas *a certain decree*

was entered in the Chancery case of A. & N. L. Johnson vs. J. P. & D. S. Glass at the May term of the Circuit Court of Lee County giving judgment against the said J. P. & D. S. Glass for a certain sum of money therein named in favor of the said plaintiffs and the said defendants feeling aggrieved by the said decree were permitted to have the execution of the said decree suspended 60 days from the date of the said decree upon execution of bond before the Clerk in the penalty of \$100.00 if the said Deft. J. P. & D. S. Glass shall pay all damages resulting from the suspension of said order, then this bond shall be null and void.

then this obligation to be void, or otherwise to remain in full force and virtue.

R. L. Pennington

SEAL

SEAL

SEAL

In the Court of the of the day of 190.....

This bond was executed and acknowledged in open Court by the obligors and ordered to be recorded,

the suret.....therein having first justified on oath that.....estate , after the payment of all..... just debts, and those for which he.....bound as security for others and expect to have to pay..... worth the sum of.....dollars, over and above all exemptions allowed by law.

Teste:

Clerk.

to

}

BOND

Commonwealth.

Know all Men by these Presents, That we A Johnson and
N. L. Johnson and L. E. Cook
are held and firmly bound unto the Commonwealth of Virginia, in the sum of (\$1500.00)
fifteen hundred Dollars,
to the payment whereof well and truly to be made to the said Commonwealth of Virginia, we bind ourselves
and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly
by these presents. And we hereby waive the benefit of our exemptions as to this obligation, and
also of any claim or right to discharge any liability to the Commonwealth arising under this bond, or by
virtue of said office, post or trust, with coupons detached from the bonds of this State. Sealed with our
seals, and dated this 5th day of September one thousand nine
hundred three

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above bound A Johnson
and N. L. Johnson partners doing business under
the style and firm name of A & N. L. Johnson
on their bill in chancery against L. G. Glass and J. P. Glass

addressed to the Judge of the Circuit Court of the County Lee
has obtained from the said Judge an injunction to enjoin and restrain L. G. Glass and
J. P. Glass from removing or selling the lumber
in the bill mentioned

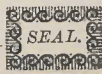
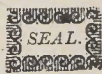
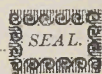
until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding
the said injunction, that the plaintiff shall not have the benefits thereof until they
or some one for them, shall enter into a bond, with good security, in the clerk's office of the
said court, payable to the Commonwealth of Virginia, in the penalty of (\$1500.00) fifteen
hundred dollars, and conditioned to pay all such costs as may be awarded against the
said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now,
therefore, if the said A and N. L. Johnson shall pay all such costs as
may be awarded against them, and all such damages as shall be incurred in case the said injunc-
tion be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

Executed in the presence of

A. W. N. L. Johnson

By J. M. Davidson Agt.

B. E. Cleary



In the Clerk's Office of the _____ Court of the _____ of _____

This day personally appeared before me _____, Clerk
of the _____ Court of the _____ of _____

_____, and made oath
that _____ estate, after the payment of all _____ just debts, and those for which he _____ bound
as security for others and expect to have to pay _____ worth the sum of _____
dollars, over and above all exemptions allowed by law.

Given under my hand, this _____ day of _____, 19____

Clerk.

And N. L. Johnson

to {

INJUNCTION
BOND.

Commonwealth.

L. H. & J. P. Glass

Recorded in Bond.
Book No. 1. Page 346

Know all Men by these Presents, That we, *L. G. Glass. J. P. Glass.
M. E. Glass and G. C. Duff*

A and N. L. Johnson
are held and firmly bound unto ~~the Commonwealth of Virginia~~ in the sum of *\$4000.00*
four thousand Dollars, to the payment whereof, well and truly to be made to the
said ~~Commonwealth of Virginia~~, we bind ourselves, and each of us, our and each of our heirs, ex-
ecutors and administrators, jointly and severally, firmly by these presents. And we hereby waive
the benefit of our exemption as to this obligation, and any claim or right to discharge any liability
to the Commonwealth arising under this bond, or by virtue of said office, post or trust with cou-
pons detached from the bonds of the State. Sealed with our seals, and dated this *23rd*
day of *September*, one thousand nine hundred *and three*

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas *a decree was entered*
by the Judge of the Circuit Court for Lee County, Va. in Vacation
on the 21st day of September 1903. Allowing the defendants
L. G. and J. P. Glass, to execute an indemnifying bond to the
plaintiffs in the sum of \$4000.00 Conditioned to pay all
damages which the plaintiffs may sustain by reason of
the lumber in the bill mentioned being turned over to
them, the said defendants L. G. and J. P. Glass.

Now if the said defendants L. G. and J. P. Glass
shall well and truly pay all damages which may be
sustained by the plaintiffs A and N. L. Johnson by
reason of said lumber in the bill and proceedings
mentioned being turned over to them the said defendants
L. G. and J. P. Glass.

(then this obligation to be void, or otherwise to remain in full force and virtue.

L. G. Glass.

J. P. Glass

M. E. Glass

G. C. Duff

Seal

SEAL.

SEAL.

SEAL.

Clerk's Office of the

In the *Circuit* Court of the *County* of *Lee* the *23rd*
day of *September* 190*3*

This bond was executed and acknowledged in open Court by the obligors, and ordered to
be recorded.

the suret therein having first justified on oath that estate, after the payment of all
just debts, and those for which he bound as security for others and expect to
have to pay worth the sum of dollars, over and above
all exemptions allowed by law.

Teste:

A copy

A. B. Munsey Clerk.

Teste: H. C. Boring Clerk

L. G. and J. P. Glass
Copy of

to

BOND.

~~Commonwealth~~

A and N. L. Johnson

ONE THOUSAND NINE HUNDRED

and detached from the books of the State, sealed with our seals and dated this

to the Commonwealth arising under this bond, or by virtue of said office, post or trust with con-
 currence and administrators jointly and severally, jointly by these presents. And we hereby waive
 said Commonwealth of Virginia we bind ourselves, and each of us, our and each of our heirs, ex-
 are held and firmly bound unto the Commonwealth of Virginia, in the sum of

known all others by these presents, that we

the Commonwealth of Virginia, in the sum of

Teste:

all exemptions allowed by law

five to pay

just debts, and those for which he

the surety therein having first justified on oath that

be recorded.

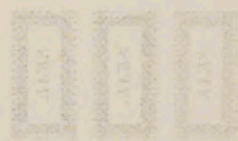
This bond was executed and acknowledged in open Court by the obligors and ordered to

Clerk

dollars, over and above

found as security for others and expect to

estate, after the payment of all



then this obligation to be void, or otherwise to remain in full force and virtue.

Amount of DAMAGES CLAIMED by the A. & N. L. JOHNSONS

J. P. GLASS & L. G. GLASS on account of lumber sold to them under contract of Jan. 3, 1902, at the prices therein stipulated, and afterwards re-sold to the said Johnsons by the said Glasses by misrepresentations at a higher price.

Price per contract Jan. 3, 1962: Price paid on re-sale.

HINKLE & BANNER YARD.

Aug. 21st, 1902.

Poplar.			Aug. 21st, 1902.			Poplar.		
1089!	142 @	23.00	23.89	:	1089!	142 @	25.00	25.97
8924!	Com	16	142.79	:	8924!	Com	17.00	151.71
3457!	1421	20	79.51	:	3457!	142	27.00	93.34
4725!	Com	16	75.60	:	4725!	Com	18.00	85.05
727!	Cull	9	66.54	:	727!	Cull	10.00	7.27

Jan. 17; 1903.

51378!	1&2	23.00	83.69	51378!	1&2	25.00	83.43
1594!	Com	16.00	83.10	5194!"	Com	17.00	83.30
156!	1&20ak	20.00	3.12	156!	1&20ak	22.00	83.43
647!	Com "	12.00	7.77	647!	Com "	13.00	83.41
2711!	Cull "	10.00	18.97	2711!	Cull	8.00	81.68

To balance over-paid	449.98	:	
	44.63		494.61

Elkanah Young Yard,

May : 29th.

May 25th.				Poplar.			
4307!	1&2	23.00	99.06	4307!	1&2	28.00	120.59
0470!	Com.	16.00	167.52	10470!	Com.	19.00	198.93
16612!	Cull	9.00	149.51	16612!	Cull	10.00	198.93
862!	1&2	23.00	19.92	862!	1&2	28.00	24.15
June 10th.				June 10th.			
2572!	Com	16	41.15	2572!	Com.	19	48.86
4271!	Cull	9-	38.44	4271!	Cull	10	42.71
July 1st.				July 1st.			
4128!	1&2	23.00	94.94	4128!	1&2	28.00	115.58
8903!	Com	16	142.45	8903!	Com	19	169.15
6802!	Cull	9	61.22	6802!	Cull	10.00	68.02
July 28th.				July 28th.			
9006!	1&2	23.00	207.13	9006!	1&2	28.00	252.16
9625!	Com.	16	344.00	9625!	Com	19.00	372.87
11854!	Cull	9	106.69	11854!	Cull	10.00	118.54
<u>1442.03</u>				<u>1697.66</u>			
To Balance over-paid				To Balance over-paid			

To Balance over-paid	1442.03	
	255.63	.

Total amount overpaid for Reasons stated above, \$300.26.

L. G. & J. P. Glass,
Dr. to

A. & N. L. Johnson.

On account of lumber contracts dated Jan. 3, 1902, July 26, 1902 & October 10, 1902.

Jan 19, 1901.	Balance on watch	\$8.75
... 21	cash	25.00
Feb. 8	Gloves .75 Shoes .50	1.25
Apr. 9	Check	90.69
... .	Iron	.10
Jan. 8 1902	Chain	1.65
... 24	Banjo \$4.75, Grip .45, Clock .75,	5.95
... 27	Ninty day note on Stout & Young yard	310.00
Feb. 20	..... Lockhart yard	500.00
Apr. 1	..... Horton yard	200.00
May 22	..... Stout yard	550.00
June 6	..... Horton yard	125.00
.... 13	..... Stout & C.V. Young yard	450.00
July 14	..... C. V. Young yard	700.00
.... 26	Check Hinkle & Banner Yard	300.00
.... 27	Grading & handling 38190'	5.73
Aug. 2	Twenty five pounds bacon	3.75
... 19	Ninty day note Edwards Yard	400.00
... ..	Time handling lumber	4.40
... 21	Check on Banner Stuff	150.00
... 22	Two sacks salt	1.80
Oct. 9	Clock	.90
... 27	Check given July 27, 1902 as advancement on contract made that day	300.00
Nov. 4	Check, balance on Lockhart yard	280.92
... .	Interest	7.25
... .	Belt, pulley, shaft, collar, etc.	26.95
... ..	Bill moulding 1.87, 2010' #1C siding 15.00 \$30.15,	32.04
... .	935' ceiling #1C @ \$10.00	9.35
... .	270'	2.70
... .	1992' #2C (1/2")	19.92
... .	550' 8.00 (3/8")	4.40
Dec. 9	Three bags salt at ninty cents	2.70
... 18	Check on Hinkle & Banner Yard	150.00
... ..	Saw \$2.50 whip .75	3.25
Oct. 10	Check advanced Elkanah Young Timber	400.00
Dec. 18	.....	150.00
		<u>\$5224.45</u>

CREDITS DURING THE YEAR, 1902.

1901.						
April, 9th,	By sawing 38,565' logs			\$115.69		
1902.						
July, 27th,	" 6209' #1&2 Pop. @ \$25.00		142.81)	Stout		
" "	" 18786' Com. " 16.00		300.58(	Yard.		
" "	" 15201' Cull " 9.00		118.82)			
Aug. 19th	" 1930' 1&2 " 25.00		44.39	Lock-		
" "	" 11803' Com. " 16.00		188.03	hart,		
" "	" 7779' Cull. 9.00		70.01	Yard.		
" "	" 3995' Lynn & Buckeye 12.00		47.94			
" 21st	" 1039' 1&2 Pop. 25.00		25.97	xxxx		
" "	" 8924' Com. 17.00		151.71	Hinkle		
" "	" 7892' Cull 9.00		71.03	&		
" "	" 3457' 5, 8/4, 1&2 27.00		93.34	xxxx.		
" "	" 4725' " Com. 18.00		85.05	Banner		
" "	" 727' " Cull 10.00		7.27			
Aug. 21st,	" 1355' 1&2 Pop 23.00		31.17	xxxx		
" "	" 5496' Com. 16.00		87.94	Stout		
" "	" 3364' Cull 9.00		30.28	xxxx		
" "	" 1389' 1&2 23.00		31.94	Yard.		
" "	" 8354' Com. 16.00		133.66			
" "	" 5437' Cull 9.00		48.33			
Oct. 8th,	" 1654' Oak 1&2 20.00		33.08	Lock-		
" "	" 2905' " Com. 12.00		34.86	hart		
" "	" 3578' " Cull 7.00		25.05			
" "	" 938' Pop. 1&2 23.00		21.57			
" "	" 5773' " Com. 16.00		92.37	Yard.		
" "	" 4163' " Cull 9.00		37.46			
" "	" 15701' Lynn & Buckeye 12.00		188.41			
Nov. 4th	4% Int. On Lockhart Yard on \$500.00		5.00			
Dec. 18	Error on page 273, Book 10, check to bal-		300.00			
ance.						
	Total		2563.75			
	To balance due, Plaintiffs, Jan. 1, 1903,			2660.70		

CREDITS DURING THE YEAR, 1903.

Jan. 17th	878' 1&2 Pop. Hinkle & Banner yard @ \$25.	\$ 9.45
" "	5194' Com. " " "	17.00 88.30
" "	6748' Cull " " "	9.00 60.73
March 26th	156' 1&2 Oak " "	22.00 3.43.
" "	647' Com " " "	13.00 8.41
" "	2711' Cull " " "	8.00 21.68
" 23d	1491' 1&2 Pop Horton Yard	23.00 34.29
" "	11029' Com. " " "	15.00 176.46
" "	5748' Cull " " "	9.00 51.73
" "	13652' Lynn " " "	12.00 163.82
	Footings, Page 2	618.30

Credits during the year 1903. Footings from sheet #1.

Mch. 25	1903	Horton yard.		
		715' oak 1&2	@20.00	\$14.30
		1994' oak com	12.00	23.92
		1554' ... cull	7.00	10.87
		One load lumber		7.00
		Interest		3.25
June 13	1903			
		1012' oak 1&2	\$20.00	20.24
		3033' ... com	12.00	36.39
		1857' ... cull	7.00	12.99
		658' pop 1&2	23.00	15.13
		40232' ... com	16.00	64.36
		3362' ... cull	9.00	30.25
		2246' lynn	12.00	26.95
		One load gum lumber		10.00
May 29	1903	Elkanah Young yard.		
		4307' pop 1&2	28.00	120.59
		10470' ... com	19.00	198.93
		16612' ... cull	10.00	166.12
June 10		862' ... 1&2	28.00	24.13
		2572' ... com	19.00	48.86
		4271' ... cull	10.00	42.71
		Discount		6.00
July 1		4128' pop 1&2	28.00	115.58
		8903' ... com	19.00	169.15
		6802' ... cull	10.00	118.54
July 28 to Aug 18	1903 inclusive			
		9906' pop 1&2	28.00	252.16
		19625' ... com	19.00	372.87
		11854' ... cull	10.00	118.54
July 28		C. V. Young or Stout yard.		
		7532' pop 1&2	23.00	172.23
		24563' ... com	16.00	393.00
		16074' ... cull	9.00	144.66
Dec 5	1903	Credit on Edwards yard overlooked		369.95
Mch 7		By discount		14.40
				<u>\$3692.85</u>

Jan. 1	1903 To balance on year 1902	\$2660.70
Mch. 7	.... Ninty day note on Dry Creek yard	734.40
....	.... Check on C. V. Young yard	580.00
.... 23	.... Interest on Horton yard	14.34
....	.... Shoes	4.50
....	.... Check, balance Horton yard to date	141.80
Apr. 2	.... Trunk \$4.75 Shoes \$1.40 Lantern .90 Dry Crk.	7.05
.... 15	.... Ninty day note Dry Creek yard	275.00
June 10	.... Wagon L.G.Glass on Elkanah Young yard	57.00
.....	.... W. E. Glass on Elkanah Young yard	47.00
..... 11	.... Ninty day note on Elkanah Young yard	306.00
..... 9	.... Sewing machine needles	.05
..... 13	.... Check Horton yard to balance	216.31
..... 15	.... Hay L.G.Glass \$4.80 hay W.E.Glass \$1.59 King bolt	6.64
..... 17	.... Paid Burke & Brown	2.50
.....	.... Gum coats	5.75
..... 18	.... Hay L.G.Glass \$2.67 Hay W.E.Glass \$1.74	4.41
..... 24	.... W.E.Glass Hay	1.87
.....	.... Hay Dry Creek yard	5.35
July 21	.... Ninty day note Elkanah Young Yard	510.00
..... 28	.... Saw \$3.15 file.15 Elkanah Young yard	3.30
..... 27	.... One lady's skirt Edwards yard	3.75
Aug. 23	.... Whip to Jim DeBow Dry Creek Yard	.65
.... 4	.... 600' #10 ceiling Elkanah Young yard	6.00
.... 24	.... Gummung saw Dry Creek yard	.20
Sept 15	.... one trunk \$2.50 Edwards yard	2.50
		<u>\$5597.07</u>

By credits during the year 1903. \$3692.85

Jan. 1	1904 To balance	\$1904.22
....	1903 To interest on balance, one year,	<u>159.64</u>
		\$2063.86

Damages sustained by the Plaintiffs on account of the failure of the Defendants to deliver to them the following lumber as per contract of Jan. 3, 1902, on poplar lumber sold to R. C. Duff and Letcher Horn.

On 45724'	1&2 poplar	@ \$17.00	\$777.30
.. 98198'	com .....	. 14.00	1374.77
.. 73067'	cull .....	. 8.00	621.07
.. 6561'	Lynn	. 8.00	52.48
.. 18000'	oak @ \$8.00 failed to be delivered on the Edwards yard.		
			<u>144.00</u>
			\$2969.62

The above shows the damages claimed by the Plaintiffs on account of their being deprived of the privilege of selling said lumber in the rough at the market price. The above prices being the difference between the market price and the contract price.

The damages on the foregoing lumber sustained by the Plaintiffs by the failure of the Defendants to deliver the same and thus depriving the Plaintiffs of manufacturing the same as follows:

45724'	1&2 poplar	@ \$17.00	\$777.30
98198'	com .....	. 18.50	1797.02
73067'	cull .....	. 11.00	803.73
6561'	Lynn	. 13.00	85.29
18000'	oak	. 8.00	<u>144.00</u>
			\$3607.34

The above price show the difference between the contract prices and the market prices for manufactured lumber.

A. & V. L. Johnson

vs

Glasses.

Contract made and entered
into between G F Kinkle of
the first and L G Glass of
the second part January the
8 1900 that L G Glass
is to have G F H poplar
timber at \$2.50 a thousand
such as he wants the oak
and chestnut at \$1.50 a thousand
such as he wants as much
as 50 thousand oak one more
G F H is to take logging
and sawing and cull burning
for his timber L G G is to
log and saw at \$5.00 a thousand
and G F is to have the poplar
culls at \$5.00 per thousand and
oak at \$5.50 per thousand as
for as L G G cull him

G. F. Kinkle
L. G. Glass

Contract
G. J. H.
L. L. Gos

" E "

Jonestville, Va. June 11 1903 No.



Hobwell's Halley Bank

Pay to the order of

E. F. Young

\$ 14.00

Fourteen

 Dollars

in full for
Timber

G. V. W. C. Lee

E. F. Young
Fletcher Barnes & Co

ANY BANK OR BANKER
PAY TO THE ORDER OF
PENNINGTON GAP BANK,
A. G. EVATT,
PENNINGTON GAP, VA.
CASHIER.

Jonestville, Va. Jan 3 1903 No.



Hobbs' Halley Bank

Pay to the order of

E. J. Ganning

\$ 75.00

Seventy-five

Dollars

as a payment on
timber

L. H. V. W. E. Glass

G. F. Young
Cyrus

Balance Bro't forward

—DEPOSITS.—

43 20
30 00

Carried Forward

1320

No. _____

\$ 30 00

Nov 14

1902

To

Charles Young

Thurf 20

For

Amelun

L H & W E Scott

Aug 25 1913

Mr J P Glass

Wesson Va

My Sir, I note your
the above. I am to come
over by the day and we
would take up your
lumber. I have just been
informed that you are
preparing to sell or have
sold it to Saloon. I
don't want any more trouble
but will just say if you
sell it to him I will attach
it and see you for book

of cost, which will cost
no more no doubt than
Bulson will pay you for
it, as I certainly will
get judgment for its market
value of its lumber
and perhaps my profit
beside

Best Love
A. Johnson

7 8 1

Letter
L. G. Glass
with Johnson
Depo.

Stick by mine

Dec 8/02

Da

Dear N. L. Johnson sis
I received your letter
the other day you
wanted me to come
over & am so busy a
trying to save when
the winter is so I can
you can go ahead and
take up that lumber you
can do me as much as
if I was there take it
up and send me off for
some if you please about
that other lumber trade I
will come over as soon
as I possible can I have
got that other contract

misplaced I cant -
find it - now I will
find it - be fore long
and if I dont - we will
come over & fix that one
you read not the ~~misery~~
the lumber is awfully
and more than the con-
tract calls for I would
like to make a change
or two in that contract
if it - suits when I come
over we will see about
a bond - that Trade we
have not closed fairly up-
on it - yet they are a
bond - 200,000 ft - of mesquite
so if you please take up my
lumber at once it is the best
lumber and send me c/o for
some your friend
L. G. Glatt

H. Johnson, Secretary.

...Office of...

N. L. Johnson, Treasurer.

Pennington Lumber Company,

Manufacturers of

Rough and Dressed Yellow Poplar Lumber and Mouldings

Cumberland River Stock.

Pennington Gap, Va., Sept 28, 1903.

Mr. John P. Glass,

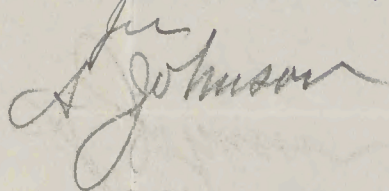
Wesson, Va.

Dear Sir;

We take this method to notify you that we will take up your lumber next Thursday, Oct. 1, 1903. Please be on hand at that time.

Very truly yours,

PENNINGTON LUMBER CO.



letter with
'A. Johnson's depts'

Enter on a line

Order No. 758 Date Nov 24/03

M. Remington Lumber Co

Ship to Gen. Kiedersdorf

At Monticello Ind

How Ship Menom When Jan 12/04

Terms Cash 1/2 2 1/2 -

300	4	17	4	-14'	Sel	S2S	38.00
500	"	"	"	16'	"	"	"
500	"	17	5	-12'	"	"	"
500	"	"	"	14'	"	"	"
500	"	"	"	16'	"	"	"
500	"	17	6	-12'	"	"	"
500	"	"	"	14'	"	"	"
500	"	"	"	16'	"	"	"
500	"	17	8	-16'	"	"	42.00
500	"	17	10	-16'	"	"	"
500	"	17	12	-12'	"	"	45.00
500	"	"	"	14'	"	"	"
500	"	"	"	16'	"	"	"
500	"	17	4	X 4 -12'	"	"	38.00
500	"	"	"	14'	"	"	"
500	"	"	"	16'	"	"	"
500	"	17	4	X 5 -14'	"	"	"
500	"	"	"	16'	"	"	"
1000	"	17	4	X 14' Chap	S2S		59.00
1000	"	5	8	-8' Chap	"	12 1/2	39.00
1000	"	2	8	-12-14-16	Sel	"	40.00
12000	"	6	"	#1 Bio. P. Sdg			25.50
2000	linet			Mldg #8046			
1000	"	"	"	#8286			65.00

1 2 3 4 5 6 7. 18, 9
~~Chaudefon~~

no Chen blot

Order No. 696 Date Oct 14/03
 M Pyramton Lumber Co
 Ship to Gilbison Lumber Co
 At Berme
 How Ship 6 R L When soon
 Terms 60 days

5000	4 6"	172 ²	ch Top Sdg	2575
10000	" 5"	"	" " "	2475
5000	" 6"	Sel.	" " "	2200
5000	" 5"	"	" " "	2100
3000	" 6"	4 ¹ / ₂ Sel.	S25	3850
1000	" 8/4-	" 14 ¹ / ₂	" "	4150
1000	" 175	"	S45	3950
				3500

J. L. Peck

Order No. 723 Date Oct 2 03
 M. Pennington Lumber Co
 Ship to Puffert Parker
 At Greensburg, Ind
 How Ship _____ When _____
 Terms 60 ds

10 Hk	#1 6" Popl Bar Sdg.	21550
25 Hk	#2 " " " "	2150
5 Hk	#1 Cam 6" " " "	1750
11 Hk	1 1/4 Sel. Rgh	4000
1 Hk	1 1/2 " "	"

J. L. Luck

4000
 540
 3460

Exhibited with
A. Johnsons Expts.

Pennington Bros.
ATTORNEYS AT LAW.

JONESVILLE AND PENNINGTON GARVA.

A. & N. L. Johnson, Complainants.

Vs.

In Chancery.

J. P. & L. G. Glass, Defendants.

BRIEF of DEFENDANTS' COUNSEL.

Pursuant to two orders entered in this cause, one on the 19th day of May, 1904, and the other on the 29th day of September, 1904, L.G. Hyatt, made and filed therein a report, on the 17th day of February, 1905. The said defendants file several exceptions to the confirmation of said report, which will be considered seriatim.

(1). The first exception to said report is on account of the commissioner failing to give the defendants credit for a small quantity of lumber measured and inspected by Joe Lawson. We apprehend this was purely an oversight, for nowhere in the report is the matter referred to at all. It is a small matter, but serves to show the failure of the said Commissioner to grasp the points in controversy in this suit. The plaintiff, L.G. Glass, in his deposition, on page 11, and in answer of question 42, says that he and Stewart who was working for the plaintiffs, disagreed "all along". He said that they laid out some boards and Joe Lawson came afterwards and inspected them, and the witness filed the tally sheet of the inspection, marked "F". This sheet is still in the files of this cause, and shows to amount to \$4.27. Sam Stewart in his deposition, on page 13 & 14 says that this lumber was inspected by Mr. Lawson. There is no other proof on this item in the case, that we remember.

(2). This second exception we think is well taken and should beyond any question be sustained. If ever a person is justified in breaking their contract, that is, in refusing to carry it out

to completion, these defendants were justified in refusing to deliver more of their lumber to the plaintiffs. Why do we say so? The contract between these parties does not undertake to define what shall constitute the different grades of lumber, except as to 4/4 X 6 inch clear boards; these the contract expressly provides shall be classed as one and twos. As to all other lumber, the question of what shall constitute the various grades, is left to the rules on that subject. On page 20 of of exhibit "J" filed with said L.G. Glasses depositions, we find the following rule: "SECONDS shall be seven inches and over wide. Seven inches must be clear". On page 9 of L.G. Glasses depositions he says, "They refused to put 4/4 X 6 inch clear boards into grade 1 & 2 as our contract called for; also the 7 inch wide clear boards".

Said Glass in his deposition on page 10 further says that from 12 to 15% of the lumber was sawed 1 X 6 inch, and that 40 to 50 per cent of these boards was clear. And on page 11 he says he did not recollect of seeing a single board that was 1 X 6 inch clear graded as a one or two. He says the plaintiffs graded them all as to him as common, which was under the contract \$16.00 per thousand feet and if they had been graded as they were to have been by the contract graded they would have been at \$25.00 per thousand feet.

W.E. Glass in his deposition on page 22 says that while he was running the saw he sawed as much as 6 to 8 per cent of the lumber into 4/4 X 6 inch clear boards. He farther says on the same page that he saw Sam Stewart grade all such boards as common. He says he also saw some 4/4 X 7 inch clear boards graded into the commons.

Sam Stewart says in his deposition, and he is the plaintiffs witness, that he found a few 4/4 X 6 inch clear boards, and he put them into the commons.

John P. Glass says on page 56 of his deposition says that he noticed a great many boards 4/4 X 6 inch clear and that the

saw by Johnson, himself put the principal part of them into the "commons".

J. F. Keys, one of the sawyers which saw a part of the lumber gotten by the plaintiffs, says on page 44 & 45 that there were a good many of the boards cut 4/4 X 6 inch, and which was clear.

None of these statements in regard to those 4/4 X 6 & 7 inch boards are controverted ~~by any one~~ ^{except} by Johnson himself.

The only answer that can be made to the foregoing facts, is that these defendants were bound to go on delivering their lumber to the plaintiffs, and after it had all been delivered, if the plaintiffs had been guilty of misgrading, to have sued them at law for the misconduct. We do not think that position tenable. Under such a state of facts, we think the defendants had a right to either quit further delivery, or to have delivered the whole of it, and then called for an accounting for the misgrading. They chose the former, as we contend they had the legal right to do. For no man is bound to stand by in an executory contract and see his contractual rights infringed upon; to prevent such an infringement he has the lawful right to treat the contract at an end.

See Reid vs. Field, 23 Va., 51-2;

Rison vs. Moon, 91 Va. 336.

We farther think it is proven clearly that the plaintiffs misgraded the lumber of the defendants in a general way. On this point we have the positive opinion of L. G. Glass, who says on page 9 of his deposition, that "the plaintiffs were improperly measuring and inspecting our lumber". He farther says on page 11 that Sam Stewart who was inspecting for Johnsons, said to him "he had to steal to hold his job". This is not positively denied by Stewart. See Stewart's deposition on page 14-15. He there said if he did say such it was in a joke, and he did not mean it.

W. E. Glass says in his deposition on page 27 that he was ac-

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guainted with the side yard of the C.V. Young timber, and this is the C.V. Young lumber that the defendants did deliver to the plaintiffs, was \$1.50 to \$2.50 better than the Mountain yard and the Dry creek yard of the same timber which Cecil Duff got, and \$2.50 better than the Ozro Young lumber.

M. Sage says on page 31 of his deposition that he helped make and stack the Smith Stout lumber, and he worked at the mill while the Mountain and Ridge yard of the C.V. Young was being made. He says that the Stout lumber was better than the Ridge C.V. Young and that the Ridge C.V. Young was better than the Mountain yard of the same timber. He further says that he saw 4/4 X 6 & 7 inch clear boards sawed at the Ridge and Mountain sets of C.V. Young lumber.

J.P. Glass, says in his deposition on page 37 that Sam Stewart, inspected a portion of the Barton yard; and that he would put 1 2s in the Commons, and Commons into the culls. Stewart says on page 14 of his deposition that J.P. Glass never did make any complaints to him about his inspection.

J.P. Glass on page 38 of his deposition says that he knew the Smyth Stout yard, and it out to have run 25% 1 & 2s, 50% Commons and the rest ship culls. Johnsons on this yard has given 14 % 1 & 2s 51 % Commons and 34 % ship culls.

W. E. Glass in batch No., on page 1 of his deposition says that none of C.V. Young logs were damaged before they were cut into lumber.

Henry Chaffin in his deposition says that Ridge yard of the C.V. Young timber was the better class of logs, and had not been damaged before sawing. He heeled peel the logs.

Eli Million says about the same thing.

R. C. Duff got the Ozro Young and Dry Creek yard of the C.V. Young lumber. And these two yards are proven to have been poorer lumber than the East or Ridge yard gotten by Johnsons; yet the percentages of 1 & 2s by Duff is 20; commons 47, and ship culls 32; Johnsons percentages are 15 1-4 2s, 50 commons and 34 Culls.

In the next place the plaintiffs neglected and refused, either on purpose or mistake to give credit for about 10,242 feet of lumber which they did get out of the C.V. Young Ridge yard. We think it was done on purpose; for when their attention is called to it, they decline to give the credit, and ~~xxxxxx~~ deny having gotten it. The proof on this question is the positive testimony of L.O. Glass (see his statement on page 12 of his deposition), corroborated by a tally sheet, the statement of W.E. Glass on page 30; by Wade H. Ellison in his deposition, and the deposition of Sam Stewart, on pages 15, 16; and the peculiar fact that the plaintiffs were able to produce all the tally sheets of the lumber gotten by them, except that taken up on the last day of June, and the 1st day of July, 1903.

(3). Whether our THIRD exception to said report is well taken, depends upon whether the SECOND exception is well taken. If the second exception is well taken, then as a matter of course, the Commissioner, finding that the plaintiffs had broken their contract in the particulars mentioned in the second exception, ought to have ascertained what was the damages under the proff to the defendants, by reason of the plaintiffs misconduct and breach of said contract of Jan., 3rd, 1902.

(4). Assuming that the defendants are chargeable with damages on account of their unwarranted breach of the said contract of Jan., 3rd, 1902, yet we think the said Commissioners report erroneous in two particulars: First, in the quantities of the several grades of the lumber which the defendants failed to deliver, and Second, in the basis on which the commissioner calculated the damages. On the former the Commissioner in making up his conclusions as to the quantum of said plaintiffs' damages, took the figures of the witness R.C. Duff both as quantities and grades of the lumber not delivered to the plaintiffs. (See page 10 of Hyatts report, and pages 44 & 45 of R.C. Duff's depo.)

So, since the Commissioner did not for the plaintiffs believe that said Duff's grades were correct, or else, he would not have found damages at all for the plaintiffs, he can not take them as correct for the purpose of calculating the ~~XXXXXXXXXXXX~~ damages to the plaintiffs. In making these calculations, he should have taken the percentages of grades of the plaintiffs, which are as the C.V. Young Lumber 17% 1 & 2s; 44% Commons, and 39% shipping culls; while Duff's per centages are 22% 1 & 2s; 47% Commons, and 31% shipping culls. If Duff's grades be correct, then we have proved to a demonstration that the plaintiffs did greatly misgrade the lumber which the defendants delivered to them. The plaintiffs will not be allowed to take Duff's figures of grades to be correct for one purpose and incorrect for an other purpose, if that other purpose be against their interests.

On the latter particular in which the commissioner was in error, that is the basis on which he made his calculations, even if the plaintiffs were before this court, ^{with clean hands} the measure of their damages for the failure of the defendants to deliver the lumber which Duff got, is not properly ascertained. It should have been ascertained according to the market price at Pennington Gap, ~~and~~ the place of delivery, for that is the general rule, and not from a quotation from the Virginia Coal & Iron Co. of Wise County. Doubtless the Commissioner took the view that there was no market on which the plaintiffs could have bought at Pennington Gap, and therefore, they were entitled to go to the nearest market for the same. But see A. Johnson's deposition on pages 13 & 14 where he says that there is a market for 1 & 2s, Commons and shipping cull lumber, which is easily ascertained, and that the highest prices he knows of any being paid for it was \$10.00; \$20.00 & \$30.00 per thousand. Yet despite this evidence, the Commissioner because Johnson answered Question 24 of his examination in chief that the Virginia Coal & Iron Co. had given him prices as he requested, ^{at \$14.00; \$27.00 and} & \$40.00, he so calculated. *See A. Johnson's Batch 2 p. 5*

Glass
golds
Johnsans.
Depts Brief

A & N.L.Johnson, Complainants.

Vs.

J. P. & L. G. Glass, Defendants.

To the Hon.H.A.W.Skeen,Judge of the Circuit Court for Lee County:

The defendants,by their counsel,in the above styled cause, except to the confirmation of the report of Commissioner,L.T.Hyatt, filed therein on the 17th day of February,1905,in the following particulars,and items,and for the following reasons:

(1). Because there is not allowed in said report any credit for the lumber measured and inspected by Joe Lawson,on August,18th,1903. See exhibit "F" filed with L.G.Glasses deposition on page 11;ques. 42.

(2). Because said commissioner finds in his said report,that the defendants without sufficient excuse, ^{did not complete} their contract of January, ^{3rd} ~~2nd~~, 1902,with the plaintiffs,in failing to deliver a portion of the C.V. Young and all of the Ozro Young lumber to the plaintiffs at Pennington Gap,when the evidence in this cause does not warrant such a finding;but on the contrary clearly proves that the plaintiffs through their agents and employees were cheating and defrauding the said defendants out of their lawful rights in said lumber,in this, especially: (a) misgrading the lumber in general,(b) misgrading in particular the 4/4 X 6 inch clear boards,and also the 4/4 X 7 inch clear boards,by placing them in the grade "Common" when by the very terms of the contract the 4/4/X 6 inch clear,and by the rules of inspection the 4/X x 7 inch boards should be placed in the higher grade of 1-& 2s,and (c) in failing and refusing to account for at any price a large amount of lumber,to-wit,about 10,000,feet.

(3). Bacuse the said Commissioner did not find as he should have done under the evidence in this cause,that the plaintiffs first broke their contract of Jan.,3rd,1902,with the said defendants;and by

reasons of such breach damaged the ~~plaintiffs~~ defendants in the sum of \$500.00 at least for misgrading, etc.

(4). Because, even if the defendants had have breached their said contract of Jan., 3rd, 1902, with said plaintiffss, without a sufficient cause in law, the commissioner has ~~properly~~ ^{not} ascertained in the lawful manner under the proof in this cause the quantum of plaintiffs' damages. He should have made his calculations from the market at Pennington Gap, the place of delivery of said lumber, at the time of the breach, and not on an isolated price made them by the Virginia Coal and Iron Co. of Wise County.

(5). Because the said Commissioner contrary to the evidence in the case, and without W.E. Glass, a party interested in the subject matter, being a party to this suit, took 80,546 feet of the Elkanah Young lumber, and transposed it to the account of theese defendants, and at a smaller price than the contract between the said plaintiffs and said W.E. Glass and L.G. Glass provided should be paid for it. The contract under which this last named lumber was sold, is dated Oct., 10th, 1902; and a copy of the same is filed with the papers of this cause.

(6). Because the Commissioner failed to give the defendants credit for \$6.00, admitted they should have in the account filed with A. Johnson's deposition, under date of June, 10, 1903; and also for \$10.00 of the \$310.00 charged to the defendants, under date of Jan., 27th, 1902; see A. Johnson's deposition, page 32.

P. G. Glassick

ads } exceptions
to
Census report

A. T. N. L. Johnson

Filed in open Court
16, day of May 1905.

W. E. Enning
Clerk

To A. and N.L.Johnson, a firm composed of A.Johnson and N.L.Johnson:

Whereas upon a bill in ^a ~~chncery~~ ^{by you} filed in the Circuit Court for Lee County, Virginia, the HON.H.A.W.Skeen, judge of the said court in vacation awarded an injunction against us, the defendants in said suit, ^{on the 5th day of Sept, 1903} ~~restarining~~ us from moving or selling the lumber mentioned in the said bill; and whereas the same was improvidently awarded, ^{and hereby} you are therefore notified that on the ^{18th} ~~18th~~ day of September, 1903, at Hise Court House in Hise Co. Va we, the said defendants, will file before the said Hon.H.A.W.Skeen judge of the said court our answer and demurrer to the said bill and at the same time and place move the said ^{Judge} ~~court~~ to dissolve the said injunction so awarded ^d as aforesaid, upon the following grounds, to wit:

(1)-Because a court of ^u ~~chncery~~ has no jurisdiction to enforce the specific execution of a contract for the sale of personal property except in cases where the injury shown is irreparable, or that the personal property in question possesses the quality of pretium affectionis, neither of which is alleged in the said bill.

(2)-Because the allegation in the said bill that the defendants are insolvent is untrue, but upon the other hand they are amply able to pay all they owe to any person or persons and any judgement which the said plaintiffs might ever be able to recover in this matter to the extent of the full value of all the lumber in question.

(3)-Because the said defendants do not owe the said plaintiff's any thing as alleged in said bill, and if they should be owing the said plaintiffs any thing they have offered to pay and have tendered payment to said plaintiffs upon ascertainment of the amount thereof, and untill the status of the account existing between the said plaintiffs and the said defendants ^{is settled} ~~is settled~~, they hereby tender and offer to execute such bond as the court may think necessary to indemnify said plaintiffs and secure to them any thing that may be due them by reason of the lien asserted in said bill.

(4)-Because the said plaintiffs in the said suit violated and broke their contract with the said defendants, and failed and refused to perform and keep its stipulations in the manner and form as stated in the said defendants' answer.

(5) Because the said defendants have faithfully kept and performed their part of the said agreement untill the said plaintiffs had broken it on their part, and have thereby become indebted to the said defendants.

(6)-And for other reasons to be assigned at the hearing of the said motion at the time and place aforesaid before the said judge in vacation as aforesaid.

Yours very truly,

J. P. L. G. Gloss.

*By Pennington Bros
Attys.*

L. G. & P. Clouse

Ads. 3 Motions to
3 Dissolve & Adj.

A. & N. L. Johnson

Executed on the 14th
day of Sept., 1903,
by delivering a true
copy of the within
notice to each A.
Johnson and N. L.
Johnson.

Given under my
hand this the 14th
day of Sept., 1903
E. L. S. S. S.

W. J. Williams
S. L. C.

A. & N. L. Johnson, Complainants.

Vs.

In Chancery.

J. P. & L. G. Glass, Defendants.

BRIEF of DEFENDANTS' COUNSEL.

Pursuant to two orders entered in this cause, one on the 19th day of May, 1904, and the other on the 29th day of September, 1904, L.G. Hyatt, made and filed therein a report, on the 17th day of February, 1905. The said defendants file several exceptions to the confirmation of said report, which will be considered *seriatim*.

(1). The first exception to said report is on account of the commissioner failing to give the defendants credit for a small quantity of lumber measured and inspected by Joe Lawson. We apprehend this was purely an oversight, for nowhere in the report is the matter referred to at all. It is a small matter, but serves to show the failure of the said Commissioner to grasp the points in controversy in this suit. The plaintiff, L.G. Glass, in his deposition, on page 11, and in answer ^{to} question 42, says that he and Stewart who was working for the plaintiffs, disagreed "all along". He said that they laid out some boards and Joe Lawson came afterwards and inspected them, and the witness filed the tally sheet of the inspection, marked "F". This sheet is still in the files of this cause, and shows to amount to \$4.27. Sam Stewart in his deposition, on page 13 & 14 says that this lumber was inspected by Mr. Lawson. There is no other proof on this item in the case, that we remember.

(2). This second exception we think is well taken and should beyond any question be sustained. If ever a person is justified in breaking their contract, that is, in refusing to carry it out

to completion, these defendants were justified in refusing to deliver more of their lumber to the plaintiffs. Why do we say so? The contract between these parties does not undertake to define what shall constitute the different grades of lumber, except as to 4/4 X 6 inch clear boards; these the contract expressly provides shall be classed as one and twos. As to all other lumber, the question of what shall constitute the various grades, is left to the rules on that subject. On page 20 of exhibit "J" filed with said L.G. Glasses depositions, we find the following rule: "SECONDS shall be seven inches and over wide. Seven inches must be clear". On page 9 of L.G. Glasses depositions he says, "They refused to put 4/4 x 6 inch clear boards into grade 1 & 2 as our contract called for; also the 7 inch wide clear boards".

Said Glass in his deposition on page 10 further says that from 12 to 15% of the lumber was sawed 1 X 6 inch, and that 40 to 50 per cent of these boards was clear. And on page 11 he says he did not recollect of seeing a single board that was 1 X 6 inch clear graded as a one or two. He says the plaintiffs graded them all as to him as common, which was under the contract \$16.00 per thousand feet and if they had been graded as they were to have been by the contract graded they would have been at \$23.00 per thousand feet.

W.E. Glass in his deposition on page 27 says that while he was running the saw he sawed as much as 6 to 8 per cent of the lumber into 4/4 X 6 inch clear boards. He farther says on the same page that he saw Sam Stewart grade all such boards as common. He says he also saw some 4/4 X 7 inch clear boards graded into the commons.

Sam Stewart says in his deposition, and he is the plaintiffs witness, that he found a few 4/4 X 6 inch clear boards, and he put them into the commons.

John P. Glass says on page 36 of his deposition says that he noticed a great many boards 4/4 X 6 inch clear and that the

same, ~~by~~ Johnson, himself put the principal part of them into the "commons".

J. F. Keys, one of the sawyers which saw a part of the lumber gotten by the plaintiffs, says on page 44 & 45 that there were a good many of the boards cut 4/4 X 6 inch, and which was clear.

None of these statements in regard to these 4/4 X 6 & 7 inch boards are controverted by any one, ^{except} ~~not even~~ by Johnson himself.

The only answer that can be made to the foregoing facts, is that these defendants were bound to go on delivering their lumber to the plaintiffs, and after it had all been delivered, if the plaintiffs had been guilty of misgrading, to have sued them at law for the misconduct. We do not think that position tenable. Under such a state of facts, we think the defendants had a right to either quit further delivery, or to have delivered the whole of it, and then called for an accounting for the misgrading. They chose the former, as we contend they had the legal right to do. For no man is bound to stand by in an executory contract and see his contractual rights infringed upon; to prevent such an infringement he has the lawful right to treat the contract at an end.

See Reid vs. Field, 83 Va., 31-2;
Rison vs. Moon, 91 Va. 386.

We farther think it is proven clearly that the plaintiffs misgraded the lumber of the defendants in a general way. On this point we have the positive opinion of L.G. Glass, who says on page 9 of his deposition, that "the plaintiffs were improperly measuring and inspecting our lumber". He farther says on page 11 that Sam Stewart who was inspecting for Johnsons, said to him "he had to steal to hold his job". This is not positively denied by Stewart. See Stewart's deposition on page 14-15. He there said if he did say such it was in a joke, and he did not mean it.

W.E. Glass says in his deposition on page 27 that he was ac-

quainted with the Ride yard of the C.V.Young timber, and this is the C.V.Young lumber that the defendants did deliver to the plaintiffs, ^{and it} was \$1.50 to \$2.50 better than the Mountain yard and the Dry creek yard of the same timber which Cecil Duff got, and \$2.50 better than the Ozro Young lumber.

W.H.Sage says on page 31 of his deposition that he helped ~~xxxx~~ edge and stack the Smith Stout lumber, and he worked at the mill while the Mountain and Ridge yard of the C.V.Young was being ^{ed}sawed. He says that the Stout lumber was better than the Ridge C.V.Young and that the Ridge C.V.Young was better than the Mountain yard of the same timber. He further says that he saw 4/4 X 6 & 7 Inch clear boards sawed at the Ridge and Mountain sets of C.V.Young lumber.

J.P.Glass, says in his deposition on page 37 that Sam Stewart, inspected a portion of the Horton yard; and that he would put 1 & 2s in the Commons, and Commons into the culls. Stewart says on page 14 of his deposition that J.P.Glass never did make any complaints to him about his inspection.

J.P.Glass on page 38 of his deposition says that he knew the Smyth Stout yard, and it out to have run 25% 1 & 2s, 50% Commons and the rest ship culls. Johnsons on this yard has given 14 % 1 & 2s 51 % Commons and 34 % ship culls.

W. E. Glass in batch No. ², on page 1 of his deposition says that none of C.V.Young logs were damaged before they were cut into lumber.

Henry Chaffin in his deposition says that Ridge yard of the C.V.Young timber was the better class of logs, and had not been damaged before sawing. He helped peel the logs.

Eli Million says about the same thing.

R. C. Duff got the Ozro Young and Dry Creek yard of the C.V.Young lumber. And these two yards are proven to have been poorer lumber than the East or Ridge yard gotten by Johnsons ~~xxx~~; yet the percentages of 1 & 2s by Duff is 20; commons 47, and Ship culls 32; Johnsons percentages are 15% 1-& 2s, 50 commons and 34 Culls.

In the next place the plaintiffs neglected and refused, either on purpose or mistake to give credit for about 10,242 feet of lumber which they did get out of the C.V. Young Ridge yard. We think it was done on purpose; for when their attention is called to it, they decline to give the credit, and ~~xxxxxx~~ deny having gotten it. The proof on this question is the positive testimony of L.G. Glass (see his statement on page 12 of his deposition), corroborated by a tally sheet, the statement of W.E. Glass on page 30; by Wade H. Ellison in his deposition, and the deposition of Sam Stewart, on pages 13, 16; and the peculiar fact that the plaintiffs were able to produce all the tally sheets of the lumber gotten by them, except that taken up on the last day of June, and the 1st day of July, 1903.

(3). Whether our THIRD exception to said report is well taken, depends upon whether the SECOND exception is well taken. If the second exception is well taken, then as a matter of course, the Commissioner, *should have found* ~~finding~~ that the plaintiffs had broken their contract in the particulars mentioned in the second exception, *and* ought to have ascertained what was the damages under the proff to the defendants, by reason of the plaintiffs misconduct and breach of said contract of Jan., 3rd, 1902.

(4). Assuming that the defendants are chargeable with damages on account of their unwarranted breach of the said contract of Jan., 3rd, 1902, yet we think the said Commissioners report erroneous in two particulars: First, in the quantities of the several grades of the lumber which the defendants failed to deliver, and Second, in the basis on which the commissioner calculated the damages. On the former, the Commissioner in making up his conclusions as to the quantum of said plaintiffs' damages, took the figures of the witness R.C. Duff both as quantities and grades of the lumber not delivered to the plaintiffs. (See page 10 of Hyatts report, and pages 44 & 45 of R.C. Duff's depo.)

Now since the Commissioner did not for the plaintiffs beleive that said Duff's gardes were correct, or else he would not have found damages at all for the plaintiffs, he can not take them as correct for the purpose of calculating the ~~xxxxxx~~ damages to the plaintiffs; in making that calculation he should have taken the percentages of grades of the plaintiffs, which are on the C.V. Young lumber 17 % 1 & 2s; 44 % Commons, and 39 % ship culls; while Duffs per cnetages are 20 % 1 & 2s; 47 % Commons, and 32 ship culls. If Duff's grades be correct, then we have proved to a demonstration that the plaintiffs did greatly misgrade the lumber which the defendants delivered to them. The plaintiffs will not be allowed to take Duffs' fugures of grades to be correct for one purpose and incorrect for an other purpose, if that other purpose be against their interests.

On the latter particular in which the commissioner was in error, that is the basis on which he made his calculations, even if the plaintiffs were before this court, ^{with clear hands} the measure of their damages for the failure of the defendants to deliver the lumber which Duff got, is not properly ascertained. It should have been ascertained according to the market price at Pennington Gap, ~~and~~ the place of delivery, for that is the general rule, and not from a quotation from the Virginia Coal & Iron Co. of Wise County. Doubtless the Commissioner took the view that there was no market on which the plaintiffs could have bought at Pennington Gap, and therefore, they were entitled to go to the nearest market for the same. But see A. Johnsons deposition on pages 13 & 14 where he says that there is a market for 1 & 2s, Commons and shipping cull lumber, which is easily ascertained, and that the highest prices he knows of any being paid for it was \$10.00; \$20.00 & \$30.00 per thousand. Yet dispite this evidence, the Commissioner because Johnson answered Question 24 of his examination in chief that the Virginia Coal & Iron Co. had given him ^{its} prices as he requested, at \$14.00; \$27.00 and & \$40.00, he so calculated.

J.P. & L.G. Glass, Defts.

Xds.

In Chancery.

A. & N.L. Johnson, Platts.

-I-

In Re Reid Vs. Field, 83 Va., 31-2, the court said in discussing the question of a breach of contract: "The leading principle is that each and every stipulation which enters into the description of that which is to be done or rendered, is equally material with every other as tending to identify the subject-matter; and ^{if} any particular remains unfulfilled the entire contract is broken and the party in default will not only be liable in damages but may be precluded from enforcing the promises on the other side. ##### And such is the rule as regards either kind, quality, quantity or time; and it matters not that the difference is slight, and will in the opinion of the court or jury, have no injurious consequences, because every man is entitled to judge for himself in such matters, and a new contract should not be substituted for that which the parties made. Performance is, as the terms import, such a thorough fulfilment of a duty as puts an end to the obligations by leaving nothing more to be done. The chief requisite consequently is that it shall be exact. The very terms of the agreement must be pursued, and if they are not, the default can not be excused on the ground that the difference is immaterial and occasions no appreciable injury."

-II-

In Re Rison V. Moon, 91 Va. 386, the court said: "If any particular of the contract remains unfulfilled, the entire contract is broken, and the party in default will not only be liable in damages, but may be precluded from enforcing the promise on the other side. No recovery can be had on a special contract without showing performance."

In Re Granite Buliding Co. vs. Saville, 101 V. 223, the court said:
"The general rule is that where there is an act to be done by one party as a condition precedent to his right to claim performance upon the part of the other, he can not claim such performance without averring the doing of such act, or giving some sufficient excuse for its non-performance."

-III-

THE MEASURE OF DAMAGES FOR THE BREACH OF A CONTRACT TO DO A COLLATERAL THING.

(1). The general rule is that, the proer measure of damages for the breach of an executory contract for the sale and delivery of personal property, is the value of the article at the time and place it should have been delivered, with interest thereon from that date until paid. Enders. V. Board of Pub. Works 1 G. 364; O. & A. R. R. Co. Vs. Fulvey 17 G. 366.

(2). When a seller contracts to furnish goods at a place where there is a market wherein the purchaser can buy similar goods, the measure of damages for the breach of the contract is the difference between the price at which he can buy similar goods there Smith V. Snyder, 82 V. 614; Trigg Vs. Clay 88 V. 330.

(3). Where a seller contracts to furnish goods at a place where there is no market wherein the purchaser can buy similar goods and the purchaser has re-sold the goods that were to be furnished him there, the measure of damages is the net difference between the price at which they were to be furnished him there, and the price at which he re-sold them. Idem. And Slaughter Vs. Denmead 88 V. 1019; 52 L. R. A 219, N.

(4). Where the seller contracts to furnish goods at a place where there is no market wherein the purchaser can buy similar goods, and the purchaser has NOT re-sold them, what is the measure of damages, and how is it to be determined, in such case? This

precise question has not been decided in this State that we can find. In Am.& Eng.Ency.Vol.5 P.31,Note,is this language: "If there is no market at the place of delivery,the value of the goods is estimated by the price in the nearest market, with cost of transportation added or deducted." This language is quoted by the court in Trigg Vs.Clay,88 v.330.

See 1 Sdge.on Dam.#~~173~~ 173-4.

Nottingham Inc Leaso. Pres 102 Va 820

Glasses

no { Brief
 drafts

A + H. R. Johnson

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU THAT YOU SUMMON

Floyd Keys and W. F. Hicks

a Notary Public at the law of *R. L. Pennington* in the town of *Jonesville Va*
to appear before ~~the Judge of our Circuit Court of the County of Lee, at the court-house~~
thereof, on the *1st* day of *February* 1904, to testify and the truth to say
in behalf of the *Defendants*, in a certain matter of controversy in our said court
before the said Judge depending and undetermined between

A Ed N. L. Johnson Plaintiff, and

L G and J. P. Glass Defendant . And this *they*
shall in no wise omit, under the penalty of £100. And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said court, at the court-house the *29th* day of
January 1904, and in the 12 *8th* year of the Commonwealth.

A. B. Munsey Clerk

Executed by
 Sommons
 this 1st day of Jan 25 1904
 L. L. McPherson
 for P. M. Ball D. C.

L. L. McPherson

as

SUBPOENA
 FOR
 WITNESS.

A. D. M. L. Johnson

Court,

the 1st day of February
 1904

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon L. H. Glass and
J. P. Glass

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the 3rd Monday in Sept, 1903, to answer a bill in chancery exhibited against Them in our said court by A. Johnson and N. L. Johnson doing business under the style and firm name of A. & N. L. Johnson

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 5th day of September, 1903, and in the 12 8th year of the Commonwealth.

A. B. Munsey, Clerk.

The necessary bond having been given the defendants L. G. Glass and J. P. Glass are enjoined and restrained from moving or selling the lumber in the bill and proceedings mentioned until the future order of the Court.

Witness A. B. Munsey Clerk of our said Court, at the Court-house thereof, the 5th day of September 1903, and in the 128th year of the Commonwealth.

A. B. Munsey Clerk

A. B. L. Johnson

SUBPOENA
IN CHANCERY.

vs.

L. G. Glass et al

Or & Noel p. q.

To 20th September Rules.

1903. Circuit Court.

Virginia, Lee County, to wit:—

I A. B. Munsey Clerk of the Circuit Court of the county and State aforesaid, do certify that Marion Gentry this day personally appeared before me in my office and made oath that he delivered attested office copies of the within writ and order of injunction aforesaid wherein, to L. G. Glass and J. P. Glass on the 5th day of September 1903. Given under my hand this 7th day of September 1903.

A. B. Munsey Clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting;

WE COMMAND YOU to summon R. R. Early, P. P. Early, J. P.
Whitaker & M. N. Offutt.

L. J. Nyatt, Special Commissioner
to appear before the Judge of our Circuit Court of the County of Lee, at
the office of said Nyatt, on the 1st day of September, 1904, to testify and the
truth to say in behalf of the Plaintiff

in a certain matter of controversy
in our said court, before the said Judge depending and undetermined, between

A. & N. L. Johnson

Plaintiffs

and

L. G. Glass, et al

Defendants;

And have then there this writ. Witness

H. C. T. Ewing

, Clerk of

our said Court, at the court-house, the 30th day of August, 1904, and in the

129th year of the Commonwealth.

H. C. T. Ewing, Clerk

A. & N. L. Johnson

vs

SUBPOENA
FOR
WITNESS

L. G. Glass et al

Lee Circuit Court,

the *1st* day of *Sept.*

1904

not executed because
not received return
this Aug. 31st 1904
J. D. Hughes A. S. J.
P. M. Ball
L. L. L.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU THAT YOU SUMMON

*R. R. Carley P. T. Early, J. T.
Whitaker and M. H. Offett*

L. T. Hyatt, Special Commissioner at the office
to appear before the ~~Judge~~ of our Circuit Court of the County of Lee, at the court house
of said *Hyatt*
thereof, on the *9th* day of *September* 190*4*, to testify and the truth to say
in behalf of the *Plaintiff*, in a certain matter of controversy in our said court
before the said Judge depending and undetermined between

A + N. L. Johnson

Plaintiff, and

L. G. Glass et al

Defendant . And this *you*

shall in no wise omit, under the penalty of £100. And have then there this writ.

Witness, *H. E. Ewing*
A. B. MUNSEY, Clerk of our said court, at the court-house the *8th* day of

September 190*4*, and in the 12 *9th* year of the Commonwealth.

H. E. Ewing Clerk.

A + R. L. Johnson

vs.

SUBPOENA
FOR
WITNESS.

L. G. Glass et al

Lee Circuit Court,

the 9th day of Sept.

1904

Executed by Commissioners
R. P. Early, P. J. Early
J. J. Whitaker
Sept 8th 1904.
Wm. Balf.
S. H. G.

See costs paid.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU THAT YOU SUMMON *Henry Choffmon* + *Eli Million* +
+ *Noble Ellison* +

L. S. Hyatt Special Comr.

to appear before ~~the~~ Judge of our Circuit Court of the County of Lee, *at his office in Jarrsville* at the court-house

thereof, on the *8th* day of *Sept.*, 190*4*, to testify and the truth to say

in behalf of the *Defendants*, in a certain matter of controversy in our said court

before the said Judge depending and undetermined between *A. M. L. Johnson*

Plaintiff, and

L. G. Glor & Co

Defendants. And this *they*

shall in no wise omit, under the penalty of £100. And have then there this writ.

H. B. Ewing
Witness, *A. B. MUNSEY*, Clerk of our said court, at the court-house the *2nd* day of

Sept., 190*4*, and in the *129* year of the Commonwealth.

H. B. Ewing Clerk

John Doe

vs.

SUBPOENA
FOR
WITNESS.

John Doe -

Court,

the day of
Decruet by
1904
within witness
this September
the 7. 1904

J. J. Hughes D.R.
for P. in Ball
L. L. C.

Sept 13/1904
4214-4 cattle
5210-3
77424
10604
5 hogs - 5810
162

7310
4220
175-50
3459
3660
3459
2010
38250
7310
3459
3660
265.85
137.15
59300
34250
1050
4220
12660
1055
13715

To L. G. Glass & J. P. Glass.
Gentlemen.

You will please take notice
that on the 10th day of December 1903. at
the law office of J. C. Vacl, in the town
of Pennington Gap Va, we will proceed to
take ^{the} depositions of A. Johnson & others,
which depositions are intended to be
read as evidence in our behalf in a
certain Chancery cause pending in the
Circuit Court of Lee County Va, in which
we are plaintiffs and you are defendants.
and if from any cause the taking of said
depositions are not commenced, or if com-
menced are not completed, on that day,
the taking of the same will be adjourned
from time to time and from place to place
~~to be~~ until completed. Respectfully,
Nov 4th 1903.

A. & N. L. Johnson.

By C. & Vacl, attys.

A. & N. L. Johnson
vs } Notice to take-
3 } - Depos-
L. G. Glass & P. Glass.

We accept Regal.
service of the within
notice. This Dec. 5
1903-

Pennington Pres.
Attest for
L. G. & J. O. Glass

Princeton June 25 -

v. 5 ³ Dr Chace

J. P. G. G. G.
